

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Proposed Rulemaking

AGENDA REQUESTED: February 7, 2018

DATE OF REQUEST: January 19, 2018

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Kris Hogan, (512) 239-6812

CAPTION: Docket No. 2017-1482-RUL. Consideration for publication of, and hearing on, proposed amended Sections 80.4 and 80.252 of 30 TAC Chapter 80, Contested Case Hearings; proposed amended Sections 288.1 and 288.30 of 30 TAC Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements; proposed new Sections 295.73, 295.121, and 295.122, the repeal of Sections 295.121 - 295.126, and amended Sections 295.151 - 295.153 of 30 TAC Chapter 295, Water Rights, Procedural; and, proposed amended Section 297.46 of 30 TAC Chapter 297, Water Rights, Substantive.

The proposed rulemaking would implement House Bill (HB) 1600 and Senate Bill (SB) 567, 83rd Texas Legislature, 2013, Regular Session, to amend requirements related to the transfer of the utilities and rates program to the Public Utility Commission of Texas; HB 1648, 85th Texas Legislature, 2017, Regular Session, to amend requirements relating to certain retail public utilities and their designation of a water conservation coordinator; HB 3735, 85th Texas Legislature, 2017, Regular Session, to amend specific map requirements and to codify the commission's practice regarding consideration of the public welfare in water rights applications; SB 864, 85th Texas Legislature, 2017, Regular Session, to amend notice requirements relating to alternate sources of water used in water rights applications; and SB 1430, 85th Texas Legislature, 2017, Regular Session, and HB 3735 to amend provisions relating to applications to change the diversion point for existing non-saline surface water rights when the applicant begins using desalinated seawater. (Kathy Ramirez, Robin Smith) (Rule Project No. 2017-034-295-OW)

L'Oreal W. Stepney, P.E.
Deputy Director

Kim Wilson
Division Director

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Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 19, 2018

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2017-1482-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 80, Contested Case Hearings
Chapter 288, Water Conservation Plans, Drought Contingency Plans,
Guidelines and Requirements
Chapter 295, Water Rights, Procedural
Chapter 297, Water Rights, Substantive
HB 1600 and SB 567 (83rd), HB 1648, HB 3735, SB 864, SB 1430 (85th):
Water Rights – Expedited Amendments, Notice, & Conservation, and PUC
Transfer
Rule Project No. 2017-034-295-OW

Background and reason(s) for the rulemaking:

In 2013, the 83rd Texas Legislature passed House Bill (HB) 1600 by Representative Byron Cook and Senate Bill (SB) 567 by Senators Kirk Watson and Robert Nichols. In 2017, the 85th Texas Legislature passed HB 1648 by Representative Four Price, HB 3735 by Representative James Frank, and SB 864 and SB 1430 by Senator Charles Perry. These bills were all effective on September 1, 2017.

HB 1600 and SB 567 relate to the Public Utility Commission of Texas (PUC) Sunset Legislation, which transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and sewer utilities.

HB 1648 relates to the designation of a water conservation coordinator by a retail public water utility to implement a water conservation plan. HB 1648 adds provisions under the Texas Water Code (TWC), §13.146, for the TCEQ to require retail public utilities that provide potable water to 3,300 or more connections to: (1) designate a person as the water conservation coordinator responsible for implementing the water conservation plan; and (2) identify, in writing, the water conservation coordinator to the executive administrator of the Texas Water Development Board (Board). In addition, TCEQ would have to take appropriate enforcement action when notified by the Board that an entity has not complied with the requirements imposed by HB 1648.

HB 3735 relates to an application for a new or amended water right submitted to the TCEQ. HB 3735 amends TWC, §11.125, to change specific map requirements in subsection (a) with a more general requirement to submit maps in the form prescribed by the commission and removes additional specific map requirements by repealing subsections (b) and (c). HB 3735 also adds new TWC, §11.134(b-1), which codifies the commission's practice to limit the commission's consideration of the public welfare in water rights applications to "those factors that are within the commission's jurisdiction and expertise." Additionally, the Enrolled version of HB 3735 also includes the provisions

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from Filed SB 1430 described below that were added to HB 3735 in a Senate Committee Substitute.

SB 864 relates to the procedure for obtaining a right to use state water if the applicant proposes an alternative source of water that is not state water. SB 864 amends notice requirements relating to alternate sources of water used in water rights applications. Amended TWC, §11.132(c) and §11.143(e), require that the notice of an application identify any proposed alternative sources of water. Amended TWC, §11.132(d) and §11.143(f), require that the commission provide mailed notice of an application to any groundwater conservation district (GCD) with jurisdiction over groundwater production in an area from which the applicant proposes to use groundwater as an alternative source. Amended TWC, §11.143(f), requires published notice of a hearing in a newspaper of general circulation in each county in which a GCD is located for applications to use an exempt reservoir to convey groundwater under the jurisdiction of a GCD.

SB 1430 relates to a requirement that the TCEQ provide an expedited procedure for acting on certain applications for an amendment to a water right by certain applicants that use desalinated seawater. New TWC, §11.122(b-1), provides that an applicant has a right, under certain circumstances, to expedited consideration of an application to change the diversion point for their existing non-saline surface water right when the applicant begins using desalinated seawater. New TWC, §11.122(b-2), further requires the executive director or the commission to prioritize the technical review of such an application over the technical review of other applications that are not subject to that subsection. Finally, for a contested case hearing relating to an application under new TWC, §11.122(b-1), newly amended Texas Government Code, §2003.047(e-3) and (e-6), require the State Office of Administrative Hearings Administrative Law Judge (ALJ) to complete a proceeding and provide a proposal for decision to the commission not later than the 270th day after the date the matter was referred for a hearing.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

Implementation of HB 1600 and SB 567

The rulemaking amends §80.4 by removing §80.4(c)(15), authorizing judges to issue interim rate orders under TWC, Chapter 13. This function transferred from the commission to the PUC on September 1, 2014.

Implementation of HB 1648

The rulemaking amends §288.1 and §288.30, to implement the directive in TWC, §13.146, related to the requirements for retail public utilities that provide potable water to 3,300 or more connections to: (1) designate a person as the water conservation coordinator responsible for implementing the water conservation plan; and, (2) identify, in writing, the water conservation coordinator to the executive administrator of the Board.

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Implementation of HB 3735

The rulemaking implements amended TWC, §11.125, by repealing §§295.121 - 295.126 and proposing new §295.121 and §295.122 which replace specific map requirements with a more general requirement to submit maps in the form prescribed by the commission. The rulemaking implements amended TWC, §11.134, by amending §297.46 to state that for purposes of public welfare findings made under this section, the commission may only consider factors that are within the commission's jurisdiction and expertise as established in TWC, Chapter 11.

Implementation of SB 864

The rulemaking amends §§295.151 - 295.153 to implement SB 864. The rulemaking implements TWC, §11.132(c) and §11.143(e), by adding §295.151(b)(9) to require any notice of a water right application to identify any proposed alternative source of water, other than state water, identified by the applicant and renumbering the remaining paragraphs in the subsection to accommodate the new requirement. The rulemaking implements TWC, §11.143(f), by adding §295.152(b) to require published notice of a hearing in a newspaper of general circulation in each county in which a GCD is located for applications to use an exempt reservoir to convey groundwater under the jurisdiction of a GCD and re-lettering existing subsection (b) to subsection (c). The rulemaking also amends §295.151(a) to specify that the subsection applies to an application for a permit pursuant to TWC, §11.121, or for an amendment to a TWC, §11.121, permit, a certified filing, or a certificate of adjudication pursuant to TWC, §11.122, and §295.158(b). Finally, the rulemaking implements TWC, §11.132(d) and §11.143(f), by adding §295.153(b)(3) and (c)(2) that each require that the commission provide mailed notice of an application to any GCD with jurisdiction over groundwater production in an area from which the applicant proposes to use groundwater as an alternative source. The rulemaking also renumbers existing paragraphs in subsections (b) and (c) to accommodate the new requirement.

Implementation of SB1430 and HB 3735

The rulemaking implements new TWC, §11.122(b-1), by proposing new §295.73 which provides certain applications with an expedited process (prioritized technical review) to change the diversion point for their existing non-saline surface water right when the applicant begins using desalinated seawater. The rulemaking also implements related amendments to Texas Government Code, §2003.047(e-3) and (e-6), by amending §80.252 to require the commission to set a deadline of no more than 270 days for contested case hearings on the §295.73 expedited amendment applications. The rulemaking also amends §80.4 to allow the ALJ who hears the contested case on a §295.73 expedited amendment to extend the deadline set for the hearing if the judge determines that failure to grant an extension would unduly deprive a party of due process or another constitutional right; or by agreement of the parties with approval of the judge. The rulemaking also clarifies that a political subdivision has the same constitutional rights as an individual for purposes of §80.4.

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B.) Scope required by federal regulations or state statutes:

There are no requirements in this rulemaking associated with federal regulations. The proposed rulemaking would implement HB 1600 and SB 567 by transferring the functions relating to the economic regulation of water and sewer utilities from the TCEQ to the PUC; HB 1648 by amending requirements relating to certain retail public utilities and their designation of a water conservation coordinator; HB 3735 by amending specific map requirements and codifying the commission's practice regarding consideration of the public welfare in water rights applications; SB 864 by amending notice requirements relating to alternate sources of water used in water rights applications; and SB 1430 by amending provisions relating to applications to change the diversion point for existing non-saline surface water rights when the applicant begins using desalinated seawater.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

Texas Government Code, §2003.047, Hearings for Texas Commission on Environmental Quality

TWC, §5.013, General Jurisdiction of Commission

TWC, §5.102, General Powers

TWC, §5.103, Rules

TWC, §5.105 General Policy

TWC, §11.122, Amendments to Water Rights Required

TWC, §11.125, Map or Plat

TWC, §11.132, Notice

TWC, §11.134, Action on Application

TWC, §11.135, Issuance of Permit

TWC, §§11.1405, Desalination of Seawater for the Use of Industrial Purposes

TWC, §11.143, Use of Water from Exempt Dam or Reservoir for Nonexempt Purposes

TWC, §13.146, Water Conservation Plan

TWC, Chapter 18, Marine Seawater Desalination Projects

Effect on the:

A.) Regulated community:

HB 1600 and SB 567

Beginning September 1, 2014, the regulated community began working with the PUC involving the economic regulation of water and sewer utilities.

HB 1648

Agency implementation activities will affect the regulated community (retail public water suppliers with greater than 3,300 or more connections). The statute requires retail public utilities that provide potable water to 3,300 or more connections to designate a person as the water conservation coordinator responsible for implementing the water conservation plan and identify, in writing, the water conservation coordinator to the executive

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administrator for the Board. The Enrolled version of the Legislative Budget Board's Fiscal Note for HB 1648 did not anticipate any significant fiscal impact to the state. Any fiscal impact cannot be quantified because the agency does not have information regarding what entities currently have a water conservation coordinator, what entities will designate existing staff as a coordinator, or what entities will employ a new water conservation coordinator.

SB 1430 and HB 3735

Agency implementation will affect the regulated community because the new prioritization of these types of applications has the potential to affect existing water rights as well as applicants for amendments to move diversion points that are administratively complete before applications submitted under §295.73 relating to expedited process. There may be cost savings for applicants eligible for the expedited application and hearing process.

SB 864

Some applicants will incur additional notice fees.

B.) Public:

Agency implementation activities for HB 1600 and SB 567 (2013) and HB 1648, HB 3735, SB 864, and SB 1430 (2017) will not affect the public.

C.) Agency programs:

Agency implementation activities for HB 1600 and SB 567 (2013) and HB 1648, HB 3735, SB 864, and SB 1430 (2017) will have minimal impact on agency programs. The Water Availability Division will implement the rules into its existing procedures for processing water rights.

Stakeholder meetings:

An informal stakeholder meeting was held on September 11, 2017, in Austin, Texas. TCEQ staff presented general information about the proposed rulemaking and solicited stakeholder comments regarding the implementation of HB 1648, HB 3735, SB 864, and SB 1430. The meeting was attended by 10 stakeholders representing a broad spectrum of interests affected by this rulemaking and across the state. The comment period related to this stakeholder meeting remained open until September 26, 2017, and the commission received comment letters from the City of Dallas, Law Offices of Glenn Jarvis, Lloyd Gosselink Rochelle & Townsend, P.C., National Wildlife Federation and Sierra Club, Lone Star Chapter, San Antonio Water System, Texas Water Conservation Association, and Ward Timber LTD. The executive director based these proposed rules on consideration of the legislation and consideration of comments received from the stakeholders.

A rule public hearing will be held during the comment period in Austin.

Potential controversial concerns and legislative interest:

There are no controversial concerns or legislative interest related to TCEQ implementation activities for these statutes.

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Will this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The consequences of failure to go forward with this rulemaking is that the commission will not fully implement the new requirements in the legislation described in this executive summary. The bills implemented in this rulemaking did not provide alternative regulatory methods.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: February 7, 2018

Anticipated *Texas Register* publication date: February 23, 2018

Anticipated public hearing date (if any): March 20, 2108

Anticipated public comment period: February 23, 2018 – March 26, 2018

Anticipated adoption date: July 2018

Agency contacts:

Kathy Ramirez, Rule Project Manager, Water Availability Division, (512) 239-6757

Robin Smith, Staff Attorney, (512) 239-0463

Kris Hogan, Texas Register Rule/Agenda Coordinator, (512) 239-6812

Attachments:

HB 1600, 83rd Texas Legislature (2013)

SB 567, 83rd Texas Legislature (2013)

HB 1648, 85th Texas Legislature (2017)

HB 3735, 85th Texas Legislature (2017)

SB 864, 85th Texas Legislature (2017)

SB 1430, 85th Texas Legislature (2017)

cc: Chief Clerk, 2 copies
Executive Director's Office
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Kathy Ramirez
Kris Hogan

AN ACT

relating to the continuation and functions of the Public Utility Commission of Texas, to the transfer of certain functions from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas, to the rates for water service, and to the functions of the Office of Public Utility Counsel; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE PUBLIC UTILITY COMMISSION OF TEXAS

SECTION 1.01. Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2023 [~~2013~~].

SECTION 1.02. Section 12.053, Utilities Code, is amended to read as follows:

Sec. 12.053. MEMBERSHIP QUALIFICATIONS. (a) To be eligible for appointment, a commissioner must ~~[be]~~:

- (1) be a qualified voter;
- (2) be a citizen of the United States; ~~[and]~~
- (3) be a competent and experienced administrator;

1 (4) be well informed and qualified in the field of
2 public utilities and utility regulation; and

3 (5) have at least five years of experience in the
4 administration of business or government or as a practicing
5 attorney or certified public accountant ~~[a representative of the~~
6 ~~general public]~~.

7 (b) A person is not eligible for appointment as a
8 commissioner if the person:

9 (1) at any time during the two years preceding
10 appointment:

11 (A) personally served as an officer, director,
12 owner, employee, partner, or legal representative of a public
13 utility regulated by the commission or of an~~[~~ affiliate~~]~~ or
14 direct competitor of a public utility regulated by the commission;
15 or

16 (B) owned or controlled, directly or indirectly,
17 more than a 10 percent interest ~~[stocks or bonds of any class with a~~
18 ~~value of \$10,000 or more]~~ in a public utility regulated by the
19 commission or in an~~[~~ affiliate~~]~~ or direct competitor of a
20 public utility regulated by the commission; or

21 (2) is not qualified to serve under Section 12.151,
22 12.152, or 12.153.

23 SECTION 1.03. Section 12.152(a), Utilities Code, is amended
24 to read as follows:

25 (a) A person is not eligible for appointment as a
26 commissioner or executive director of the commission if:

27 (1) the person serves on the board of directors of a

1 company that supplies fuel, utility-related services, or
2 utility-related products to regulated or unregulated electric or
3 telecommunications utilities; or

4 (2) the person or the person's spouse:

5 (A) is employed by or participates in the
6 management of a business entity or other organization that is
7 regulated by or receives funds from the commission;

8 (B) directly or indirectly owns or controls more
9 than a 10 percent interest [~~or a pecuniary interest with a value~~
10 ~~exceeding \$10,000~~] in:

11 (i) a business entity or other organization
12 that is regulated by or receives funds from the commission; or

13 (ii) a utility competitor, utility
14 supplier, or other entity affected by a commission decision in a
15 manner other than by the setting of rates for that class of
16 customer;

17 (C) uses or receives a substantial amount of
18 tangible goods, services, or funds from the commission, other than
19 compensation or reimbursement authorized by law for commission
20 membership, attendance, or expenses; or

21 (D) notwithstanding Paragraph (B), has an
22 interest in a mutual fund or retirement fund in which more than 10
23 percent of the fund's holdings at the time of appointment is in a
24 single utility, utility competitor, or utility supplier in this
25 state and the person does not disclose this information to the
26 governor, senate, commission, or other entity, as appropriate.

27 SECTION 1.04. Section 12.154(a), Utilities Code, is amended

1 to read as follows:

2 (a) During the period of service with the commission, a
3 commissioner or commission employee may not:

4 (1) have a pecuniary interest, including an interest
5 as an officer, director, partner, owner, employee, attorney, or
6 consultant, in:

7 (A) a public utility or affiliate; or

8 (B) a person a significant portion of whose
9 business consists of furnishing goods or services to public
10 utilities or affiliates; or

11 ~~(2) [directly or indirectly own or control securities~~
12 ~~in a public utility, affiliate, or direct competitor of a public~~
13 ~~utility; or~~

14 ~~[(3)]~~ accept a gift, gratuity, or entertainment from:

15 (A) a public utility, affiliate, or direct
16 competitor of a public utility;

17 (B) a person a significant portion of whose
18 business consists of furnishing goods or services to public
19 utilities, affiliates, or direct competitors of public utilities;
20 or

21 (C) an agent, representative, attorney,
22 employee, officer, owner, director, or partner of a person
23 described by Paragraph (A) or (B).

24 SECTION 1.05. Section 12.155, Utilities Code, is amended by
25 adding Subsection (d) to read as follows:

26 (d) A commissioner may not be employed by an independent
27 organization certified under Section 39.151. The prohibition under

this subsection applies until the second anniversary of the date the commissioner ceases to serve as a commissioner.

SECTION 1.06. Chapter 15, Utilities Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. CEASE AND DESIST ORDERS

Sec. 15.101. APPLICATION OF SUBCHAPTER. This subchapter applies only to a person to whom Subtitle B applies.

Sec. 15.102. RULES. The commission shall adopt rules to implement this subchapter.

Sec. 15.103. PROCEEDINGS UNDER OTHER LAW. The commission may proceed solely under this subchapter or under this subchapter in conjunction with other applicable law.

Sec. 15.104. AUTHORITY TO ISSUE ORDER. (a) The commission on its own motion may issue a cease and desist order:

(1) after providing notice and an opportunity for a hearing if practicable or without notice or opportunity for a hearing; and

(2) if the commission determines that the conduct of a person:

(A) poses a threat to continuous and adequate electric service;

(B) is hazardous;

(C) creates an immediate danger to the public safety; or

(D) is causing or can be reasonably expected to cause an immediate injury to a customer of electric services and that the injury is incapable of being repaired or rectified by

1 monetary compensation.

2 (b) The commission by order or rule may delegate to the
3 executive director the authority to issue cease and desist orders
4 under this subchapter.

5 Sec. 15.105. NOTICE. (a) Notice of a proposed order must
6 be given not later than the 10th day before the date set for a
7 hearing if the commission requires notice and hearing before
8 issuing the order.

9 (b) On issuance of an order under Section 15.104 with or
10 without a hearing, the commission shall serve on the person
11 affected by the order an order that:

12 (1) contains a statement of the charges; and

13 (2) requires the person immediately to cease and
14 desist from the acts, methods, or practices stated in the order.

15 (c) The commission shall serve the order by registered or
16 certified mail, return receipt requested, to the person's last
17 known address.

18 Sec. 15.106. HEARING. (a) Chapter 2001, Government Code,
19 does not apply to the issuance of a cease and desist order under
20 this subchapter without a hearing. A hearing conducted before or
21 after issuance of an order under this subchapter is a contested case
22 under Chapter 2001, Government Code.

23 (b) If the commission issues an order under this subchapter
24 without a hearing, the person affected by the order may request a
25 hearing to affirm, modify, or set aside the order. A request must
26 be submitted not later than the 30th day after the date the person
27 receives the order. The commission shall set the hearing for a date

1 that is:

2 (1) not later than the 10th day after the date the
3 commission receives a request for a hearing; or

4 (2) agreed to by the person and the commission.

5 (c) At or following the hearing, the commission shall wholly
6 or partly affirm, modify, or set aside the order. If the person
7 affected by an order does not request a hearing in the manner
8 provided by Subsection (b) and the commission does not hold a
9 hearing on the order, the order is affirmed without further action
10 by the commission.

11 (d) The commission may hold a hearing under this subchapter
12 or may authorize the State Office of Administrative Hearings to
13 hold the hearing.

14 Sec. 15.107. EFFECT OF ORDER PENDING HEARING. Pending a
15 hearing under this subchapter, an order continues in effect unless
16 the order is stayed by the commission.

17 SECTION 1.07. Section 39.107, Utilities Code, is amended by
18 adding Subsection (k) to read as follows:

19 (k) The commission by rule shall prohibit an electric
20 utility or transmission and distribution utility from selling,
21 sharing, or disclosing information generated, provided, or
22 otherwise collected from an advanced metering system or meter
23 information network, including information used to calculate
24 charges for service, historical load data, and any other customer
25 information. The commission shall allow an electric utility or
26 transmission and distribution utility to share information with an
27 affiliated corporation, or other third-party entity, if the

1 information is to be used only for the purpose of providing electric
2 utility service to the customer or other customer-approved
3 services.

4 SECTION 1.08. Section 39.151, Utilities Code, is amended by
5 amending Subsections (d-1) and (e) and adding Subsections (d-2),
6 (d-3), (d-4), and (e-1) to read as follows:

7 (d-1) The commission shall require an independent
8 organization certified by the commission under this section to
9 submit to the commission the organization's entire proposed annual
10 budget. The commission shall review the proposed budgets either
11 annually or biennially and may approve, disapprove, or modify any
12 item included in a proposed budget. The commission by rule shall
13 establish the type of information or documents needed to
14 effectively evaluate the proposed budget and reasonable dates for
15 the submission of that information or those documents. The
16 commission shall establish a procedure to provide public notice of
17 and public participation in the budget review process.

18 (d-2) Except as otherwise agreed to by the commission and an
19 independent organization certified by the commission under this
20 section, the organization must submit to the commission for review
21 and approval proposals for obtaining debt financing or for
22 refinancing existing debt. The commission may approve, disapprove,
23 or modify a proposal.

24 (d-3) An independent organization certified by the
25 commission under this section shall develop proposed performance
26 measures to track the organization's operations. The independent
27 organization must submit the proposed performance measures to the

1 commission for review and approval. The commission shall review
2 the organization's performance as part of the budget review process
3 under Subsection (d-1). The commission shall prepare a report at
4 the time the commission approves the organization's budget
5 detailing the organization's performance and submit the report to
6 the lieutenant governor, the speaker of the house of
7 representatives, and each house and senate standing committee that
8 has jurisdiction over electric utility issues.

9 (d-4) The commission may:

10 (1) require an independent organization to provide
11 reports and information relating to the independent organization's
12 performance of the functions prescribed by this section and
13 relating to the organization's revenues, expenses, and other
14 financial matters;

15 (2) prescribe a system of accounts for an independent
16 organization;

17 (3) conduct audits of an independent organization's
18 performance of the functions prescribed by this section or relating
19 to its revenues, expenses, and other financial matters and may
20 require an independent organization to conduct such an audit;

21 (4) inspect an independent organization's facilities,
22 records, and accounts during reasonable hours and after reasonable
23 notice to the independent organization;

24 (5) assess administrative penalties against an
25 independent organization that violates this title or a rule or
26 order adopted by the commission and, at the request of the
27 commission, the attorney general may apply for a court order to

1 require an independent organization to comply with commission rules
2 and orders in the manner provided by Chapter 15; and

3 (6) resolve disputes between an affected person and an
4 independent organization and adopt procedures for the efficient
5 resolution of such disputes.

6 (e) After approving the budget of an independent
7 organization under Subsection (d-1), the ~~[The]~~ commission shall
8 ~~[may]~~ authorize the ~~[an independent]~~ organization ~~[that is~~
9 ~~certified under this section]~~ to charge ~~[a reasonable and~~
10 ~~competitively neutral rate]~~ to wholesale buyers and sellers a
11 system administration fee, within a range determined by the
12 commission, that is reasonable and competitively neutral to fund
13 ~~[to cover]~~ the independent organization's approved budget ~~[costs]~~.

14 The commission shall investigate the organization's cost
15 efficiencies, salaries and benefits, and use of debt financing and
16 may require the organization to provide any information needed to
17 effectively evaluate ~~[the organization's budget and]~~ the
18 reasonableness and neutrality of the fee ~~[a rate or proposed rate]~~
19 or to evaluate the effectiveness or efficiency of the organization.
20 The commission shall work with the organization to establish the
21 detail of information, both current and historical, and the time
22 frames the commission needs to effectively evaluate the fee. The
23 commission shall require the organization to closely match actual
24 revenues generated by the fee and other sources of revenue with
25 revenue necessary to fund the budget, taking into account the
26 effect of a fee change on market participants and consumers, to
27 ensure that the budget year does not end with surplus or

1 insufficient funds. The commission shall require the organization
2 to submit to the commission, on a schedule determined by the
3 commission, reports that compare actual expenditures with budgeted
4 expenditures [~~a rate or a rate request~~].

5 (e-1) The review and approval of a proposed budget under
6 Subsection (d-1) or a proceeding to authorize and set the range for
7 the amount of a fee under Subsection (e) is not a contested case for
8 purposes of Chapter 2001, Government Code.

9 SECTION 1.09. Section 39.1515(c), Utilities Code, is
10 amended to read as follows:

11 (c) The independent organization shall use money from the
12 fee [~~rate~~] authorized by Section 39.151(e) to pay for the market
13 monitor's activities.

14 SECTION 1.10. Section 39.903(d), Utilities Code, is amended
15 to read as follows:

16 (d) The commission shall annually review and approve system
17 benefit fund accounts, projected revenue requirements, and
18 proposed nonbypassable fees. [~~The commission shall report to the~~
19 ~~electric utility restructuring legislative oversight committee if~~
20 ~~the system benefit fund fee is insufficient to fund the purposes set~~
21 ~~forth in Subsection (e) to the extent required by this section.~~]

22 SECTION 1.11. Subchapter C, Chapter 52, Utilities Code, is
23 amended by adding Section 52.1035 to read as follows:

24 Sec. 52.1035. RENEWAL OF CERTAIN CERTIFICATES. (a) The
25 commission by rule shall require each holder of a certificate of
26 operating authority and holder of a service provider certificate of
27 operating authority to file with the commission on a one-time or

1 regular basis:

2 (1) the certificate holder's name;

3 (2) the certificate holder's address; and

4 (3) the most recent version of each annual report the
5 commission requires the certificate holder to file under this
6 subtitle.

7 (b) The rules must:

8 (1) require the commission to automatically allow a
9 certificate holder an extension of a filing deadline for the number
10 of days prescribed by the rule, as applicable; and

11 (2) state that the certificate of a holder will not be
12 valid after the last day of the automatic extension period
13 described by Subdivision (1) if the certificate holder does not
14 file information required by the commission under this section by
15 the end of the automatic extension period.

16 (c) A certificate holder whose certificate is no longer
17 valid may obtain a new certificate only by complying with the
18 requirements prescribed for obtaining an original certificate.

19 SECTION 1.12. Section 64.003, Utilities Code, is repealed.

20 SECTION 1.13. The Public Utility Commission of Texas shall
21 adopt rules necessary to implement Section 39.107(k), Utilities
22 Code, as added by this article, as soon as practicable after the
23 effective date of this Act.

24 SECTION 1.14. The Public Utility Commission of Texas shall
25 adopt rules to implement the filing process required by Section
26 52.1035, Utilities Code, as added by this article, as soon as
27 practicable. The rules must specify whether the commission will

1 require that a holder of a certificate of operating authority or
2 holder of a service provider certificate of operating authority
3 file the information required by Section 52.1035, Utilities Code,
4 as added by this article, once or on a regular basis. Regardless of
5 the frequency of filing required, each certificate holder shall
6 file the information required by Section 52.1035, Utilities Code,
7 as added by this article, not later than January 1, 2015. If the
8 commission requires regular filings, the rules must specify the
9 timing of the subsequent filings.

10 ARTICLE 2. WATER AND SEWER UTILITIES AND OTHER RELATED DUTIES OF
11 THE PUBLIC UTILITY COMMISSION OF TEXAS; RATES FOR WATER SERVICE

12 SECTION 2.01. Section 5.013(a), Water Code, is amended to
13 read as follows:

14 (a) The commission has general jurisdiction over:

15 (1) water and water rights including the issuance of
16 water rights permits, water rights adjudication, cancellation of
17 water rights, and enforcement of water rights;

18 (2) continuing supervision over districts created
19 under Article III, Sections 52(b)(1) and (2), and Article XVI,
20 Section 59, of the Texas Constitution;

21 (3) the state's water quality program including
22 issuance of permits, enforcement of water quality rules, standards,
23 orders, and permits, and water quality planning;

24 (4) the determination of the feasibility of certain
25 federal projects;

26 (5) the adoption and enforcement of rules and
27 performance of other acts relating to the safe construction,

1 maintenance, and removal of dams;

2 (6) conduct of the state's hazardous spill prevention
3 and control program;

4 (7) the administration of the state's program relating
5 to inactive hazardous substance, pollutant, and contaminant
6 disposal facilities;

7 (8) the administration of a portion of the state's
8 injection well program;

9 (9) the administration of the state's programs
10 involving underground water and water wells and drilled and mined
11 shafts;

12 (10) the state's responsibilities relating to regional
13 waste disposal;

14 (11) the responsibilities assigned to the commission
15 by Chapters 361, 363, 382, and 401, Health and Safety Code; and

16 (12) ~~[administration of the state's water rate program~~
17 ~~under Chapter 13 of this code, and~~

18 ~~[(13)]~~ any other areas assigned to the commission by
19 this code and other laws of this state.

20 SECTION 2.02. Section 5.311(a), Water Code, is amended to
21 read as follows:

22 (a) The commission may delegate to an administrative law
23 judge of the State Office of Administrative Hearings the
24 responsibility to hear any matter before the commission ~~[and to~~
25 ~~issue interlocutory orders related to interim rates under Chapter~~
26 ~~13]~~.

27 SECTION 2.03. Section 5.507, Water Code, is amended to read

1 as follows:

2 Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT
3 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.
4 The commission or the Public Utility Commission of Texas may issue
5 an emergency order appointing a willing person to temporarily
6 manage and operate a utility under Section 13.4132. Notice of the
7 action is adequate if the notice is mailed or hand delivered to the
8 last known address of the utility's headquarters.

9 SECTION 2.04. Sections 5.508(a) and (c), Water Code, are
10 amended to read as follows:

11 (a) Notwithstanding the requirements of Subchapter F,
12 Chapter 13 [~~Section 13.187~~], the Public Utility Commission of Texas
13 [~~commission~~] may authorize an emergency rate increase for a utility
14 for which a person has been appointed under Section 5.507 or 13.4132
15 [~~13.412~~] or for which a receiver has been appointed under Section
16 13.412 [~~13.4132~~] if the increase is necessary to ensure the
17 provision of continuous and adequate services to the utility's
18 customers. The Public Utility Commission of Texas shall consult
19 with the commission as needed to carry out this section.

20 (c) Notwithstanding Section 5.505, an order may be issued
21 under this section for a term not to exceed 15 months. The Public
22 Utility Commission of Texas [~~commission~~] shall schedule a hearing
23 to establish a final rate within 15 months after the date on which
24 an emergency rate increase takes effect. The additional revenues
25 collected under an emergency rate increase are subject to refund if
26 the utility commission finds that the rate increase was larger than
27 necessary to ensure continuous and adequate service.

SECTION 2.05. Section 11.002, Water Code, is amended by adding Subdivision (21) to read as follows:

(21) "Utility commission" means the Public Utility Commission of Texas.

SECTION 2.06. Section 11.041(f), Water Code, is amended to read as follows:

(f) The commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. The utility commission may participate in the hearing if necessary to present evidence on the price or rental demanded for the available water. On completion of the hearing, the commission shall render a written decision.

SECTION 2.07. Section 12.013, Water Code, is amended to read as follows:

Sec. 12.013. RATE-FIXING POWER. (a) The utility commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12 of this code.

(b) In this section, ~~[The term]~~ "political subdivision" ~~[when used in this section]~~ means incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

(c) The utility commission in reviewing and fixing reasonable rates for furnishing water under this section may use any reasonable basis for fixing rates as may be determined by the utility commission to be appropriate under the circumstances of the

1 case being reviewed; provided, however, the utility commission may
2 not fix a rate which a political subdivision may charge for
3 furnishing water which is less than the amount required to meet the
4 debt service and bond coverage requirements of that political
5 subdivision's outstanding debt.

6 (d) The utility commission's jurisdiction under this
7 section relating to incorporated cities, towns, or villages shall
8 be limited to water furnished by such city, town, or village to
9 another political subdivision on a wholesale basis.

10 (e) The utility commission may establish interim rates and
11 compel continuing service during the pendency of any rate
12 proceeding.

13 (f) The utility commission may order a refund or assess
14 additional charges from the date a petition for rate review is
15 received by the utility commission of the difference between the
16 rate actually charged and the rate fixed by the utility commission,
17 plus interest at the statutory rate.

18 ~~[(g) No action or proceeding commenced prior to January 1,~~
19 ~~1977, before the Texas Water Rights Commission shall be affected by~~
20 ~~the enactment of this section.~~

21 ~~[(h) Nothing herein contained shall affect the jurisdiction~~
22 ~~of the Public Utility Commission.]~~

23 SECTION 2.08. Section 13.002, Water Code, is amended by
24 amending Subdivisions (2), (18), and (22) and adding Subdivisions
25 (4-a), (4-b), (4-c), and (22-a) to read as follows:

26 (2) "Affiliated interest" or "affiliate" means:

27 (A) any person or corporation owning or holding

1 directly or indirectly five percent or more of the voting
2 securities of a utility;

3 (B) any person or corporation in any chain of
4 successive ownership of five percent or more of the voting
5 securities of a utility;

6 (C) any corporation five percent or more of the
7 voting securities of which is owned or controlled directly or
8 indirectly by a utility;

9 (D) any corporation five percent or more of the
10 voting securities of which is owned or controlled directly or
11 indirectly by any person or corporation that owns or controls
12 directly or indirectly five percent or more of the voting
13 securities of any utility or by any person or corporation in any
14 chain of successive ownership of five percent of those utility
15 securities;

16 (E) any person who is an officer or director of a
17 utility or of any corporation in any chain of successive ownership
18 of five percent or more of voting securities of a public utility;

19 (F) any person or corporation that the utility
20 commission, after notice and hearing, determines actually
21 exercises any substantial influence or control over the policies
22 and actions of a utility or over which a utility exercises such
23 control or that is under common control with a utility, such control
24 being the possession directly or indirectly of the power to direct
25 or cause the direction of the management and policies of another,
26 whether that power is established through ownership or voting of
27 securities or by any other direct or indirect means; or

1 (G) any person or corporation that the utility
2 commission, after notice and hearing, determines is exercising
3 substantial influence over the policies and actions of the utility
4 in conjunction with one or more persons or corporations with which
5 they are related by ownership or blood relationship, or by action in
6 concert, that together they are affiliated within the meaning of
7 this section, even though no one of them alone is so affiliated.

8 (4-a) "Class A utility" means a public utility that
9 provides retail water or sewer utility service through 10,000 or
10 more taps or connections.

11 (4-b) "Class B utility" means a public utility that
12 provides retail water or sewer utility service through 500 or more
13 taps or connections but fewer than 10,000 taps or connections.

14 (4-c) "Class C utility" means a public utility that
15 provides retail water or sewer utility service through fewer than
16 500 taps or connections.

17 (18) "Regulatory authority" means, in accordance with
18 the context in which it is found, ~~[either]~~ the commission, the
19 utility commission, or the governing body of a municipality.

20 (22) "Test year" means the most recent 12-month
21 period, beginning on the first day of a calendar or fiscal year
22 quarter, for which ~~[representative]~~ operating data for a retail
23 public utility are available. ~~[A utility rate filing must be based~~
24 ~~on a test year that ended less than 12 months before the date on~~
25 ~~which the utility made the rate filing.]~~

26 (22-a) "Utility commission" means the Public Utility
27 Commission of Texas.

SECTION 2.09. Section 13.004, Water Code, is amended to read as follows:

Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a) Notwithstanding any other law, the utility commission has the same jurisdiction over a water supply or sewer service corporation that the utility commission has under this chapter over a water and sewer utility if the utility commission finds that the water supply or sewer service corporation:

(1) is failing to conduct annual or special meetings in compliance with Section 67.007; or

(2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and (24).

(b) If the water supply or sewer service corporation voluntarily converts to a special utility district operating under Chapter 65, the utility commission's jurisdiction provided by this section ends.

SECTION 2.10. Section 13.011, Water Code, is amended to read as follows:

Sec. 13.011. EMPLOYEES. (a) The utility commission and the executive director of the commission, subject to approval, as applicable, by the utility commission or the commission, shall employ any engineering, accounting, and administrative personnel necessary to carry out each agency's powers and duties under this chapter.

1 (b) The executive director and the commission's staff are
2 responsible for the gathering of information relating to all
3 matters within the jurisdiction of the commission under this
4 subchapter. The utility commission and the utility commission's
5 staff are responsible for the gathering of information relating to
6 all matters within the jurisdiction of the utility commission under
7 this subchapter. The duties of the utility commission, the
8 executive director, and the staff of the utility commission or
9 commission, as appropriate, include:

10 (1) accumulation of evidence and other information
11 from water and sewer utilities, ~~[and]~~ from the utility commission
12 or commission, as appropriate, and the governing body of the
13 respective agency, [commission and the board] and from other
14 sources for the purposes specified by this chapter;

15 (2) preparation and presentation of evidence before
16 the utility commission or commission, as appropriate, [commission]
17 or its appointed examiner in proceedings;

18 (3) conducting investigations of water and sewer
19 utilities under the jurisdiction of the utility commission or
20 commission, as appropriate [commission];

21 (4) preparation of recommendations that the utility
22 commission or commission, as appropriate, [commission] undertake
23 an investigation of any matter within its jurisdiction;

24 (5) preparation of recommendations and a report for
25 inclusion in the annual report of the utility commission or
26 commission, as appropriate [commission];

27 (6) protection and representation of the public

1 interest[, ~~together with the public interest advocate,~~] before the
2 utility commission or commission, as appropriate [~~commission~~]; and

3 (7) other activities that are reasonably necessary to
4 enable the utility commission and the executive director and the
5 staff of the utility commission or commission, as appropriate, to
6 perform their duties.

7 SECTION 2.11. Section 13.014, Water Code, is amended to
8 read as follows:

9 Sec. 13.014. ATTORNEY GENERAL TO REPRESENT COMMISSION OR
10 UTILITY COMMISSION. The attorney general shall represent the
11 commission or the utility commission under this chapter in all
12 matters before the state courts and any court of the United States.

13 SECTION 2.12. Subchapter B, Chapter 13, Water Code, is
14 amended by adding Section 13.017 to read as follows:

15 Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL; POWERS AND
16 DUTIES. (a) In this section, "counsellor" and "office" have the
17 meanings assigned by Section 11.003, Utilities Code.

18 (b) The independent Office of Public Utility Counsel
19 represents the interests of residential and small commercial
20 consumers under this chapter. The office:

21 (1) shall assess the effect of utility rate changes
22 and other regulatory actions on residential consumers in this
23 state;

24 (2) shall advocate in the office's own name a position
25 determined by the counsellor to be most advantageous to a
26 substantial number of residential consumers;

27 (3) may appear or intervene, as a party or otherwise,

1 as a matter of right on behalf of:

2 (A) residential consumers, as a class, in any
3 proceeding before the utility commission, including an alternative
4 dispute resolution proceeding; and

5 (B) small commercial consumers, as a class, in
6 any proceeding in which the counsellor determines that small
7 commercial consumers are in need of representation, including an
8 alternative dispute resolution proceeding;

9 (4) may initiate or intervene as a matter of right or
10 otherwise appear in a judicial proceeding:

11 (A) that involves an action taken by an
12 administrative agency in a proceeding, including an alternative
13 dispute resolution proceeding, in which the counsellor is
14 authorized to appear; or

15 (B) in which the counsellor determines that
16 residential consumers or small commercial consumers are in need of
17 representation;

18 (5) is entitled to the same access as a party, other
19 than utility commission staff, to records gathered by the utility
20 commission under Section 13.133;

21 (6) is entitled to discovery of any nonprivileged
22 matter that is relevant to the subject matter of a proceeding or
23 petition before the utility commission;

24 (7) may represent an individual residential or small
25 commercial consumer with respect to the consumer's disputed
26 complaint concerning retail utility services that is unresolved
27 before the utility commission;

1 (8) may recommend legislation to the legislature that
2 the office determines would positively affect the interests of
3 residential and small commercial consumers; and

4 (9) may conduct consumer outreach and education
5 programs for residential and small commercial consumers.

6 (c) This section does not:

7 (1) affect a duty the office is required to perform
8 under other law; or

9 (2) limit the authority of the utility commission to
10 represent residential or small commercial consumers.

11 (d) The appearance of the counsellor in a proceeding does
12 not preclude the appearance of other parties on behalf of
13 residential or small commercial consumers. The counsellor may not
14 be grouped with any other party.

15 SECTION 2.13. Section 13.041, Water Code, is amended to
16 read as follows:

17 Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND
18 COMMISSION [~~POWER~~]; RULES; HEARINGS. (a) The utility commission
19 may regulate and supervise the business of each [~~every~~] water and
20 sewer utility within its jurisdiction, including ratemaking and
21 other economic regulation. The commission may regulate water and
22 sewer utilities within its jurisdiction to ensure safe drinking
23 water and environmental protection. The utility commission and the
24 commission [~~and~~] may do all things, whether specifically designated
25 in this chapter or implied in this chapter, necessary and
26 convenient to the exercise of these powers [~~this power~~] and
27 jurisdiction. The utility commission may consult with the

1 commission as necessary in carrying out its duties related to the
2 regulation of water and sewer utilities.

3 (b) The commission and the utility commission shall adopt
4 and enforce rules reasonably required in the exercise of [~~its~~]
5 powers and jurisdiction of each agency, including rules governing
6 practice and procedure before the commission and the utility
7 commission.

8 (c) The commission and the utility commission may call and
9 hold hearings, administer oaths, receive evidence at hearings,
10 issue subpoenas to compel the attendance of witnesses and the
11 production of papers and documents, and make findings of fact and
12 decisions with respect to administering this chapter or the rules,
13 orders, or other actions of the commission or the utility
14 commission.

15 (c-1) In addition to the powers and duties of the State
16 Office of Administrative Hearings under Title 2, Utilities Code,
17 the utility commission may delegate to an administrative law judge
18 of the State Office of Administrative Hearings the responsibility
19 and authority to issue interlocutory orders related to interim
20 rates under this chapter.

21 (d) The utility commission may issue emergency orders, with
22 or without a hearing:

23 (1) to compel a water or sewer service provider that
24 has obtained or is required to obtain a certificate of public
25 convenience and necessity to provide continuous and adequate water
26 service, sewer service, or both, if the discontinuance of the
27 service is imminent or has occurred because of the service

1 provider's actions or failure to act; and

2 (2) to compel a retail public utility to provide an
3 emergency interconnection with a neighboring retail public utility
4 for the provision of temporary water or sewer service, or both, for
5 not more than 90 days if service discontinuance or serious
6 impairment in service is imminent or has occurred.

7 (e) The utility commission may establish reasonable
8 compensation for the temporary service required under Subsection
9 (d)(2) [~~of this section~~] and may allow the retail public utility
10 receiving the service to make a temporary adjustment to its rate
11 structure to ensure proper payment.

12 (f) If an order is issued under Subsection (d) without a
13 hearing, the order shall fix a time, as soon after the emergency
14 order is issued as is practicable, and place for a hearing to be
15 held before the utility commission.

16 (g) The regulatory assessment required by Section 5.701(n)
17 [~~5.235(n) of this code~~] is not a rate and is not reviewable by the
18 utility commission under Section 13.043 [~~of this code~~]. The
19 commission has the authority to enforce payment and collection of
20 the regulatory assessment.

21 SECTION 2.14. Section 13.042, Water Code, is amended to
22 read as follows:

23 Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND
24 APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the
25 limitations imposed in this chapter and for the purpose of
26 regulating rates and services so that those rates may be fair, just,
27 and reasonable and the services adequate and efficient, the

1 governing body of each municipality has exclusive original
2 jurisdiction over all water and sewer utility rates, operations,
3 and services provided by a water and sewer utility within its
4 corporate limits.

5 (b) The governing body of a municipality by ordinance may
6 elect to have the utility commission exercise exclusive original
7 jurisdiction over the utility rates, operation, and services of
8 utilities, within the incorporated limits of the municipality.

9 (c) The governing body of a municipality that surrenders its
10 jurisdiction to the utility commission may reinstate its
11 jurisdiction by ordinance at any time after the second anniversary
12 of the date on which the municipality surrendered its jurisdiction
13 to the utility commission, except that the municipality may not
14 reinstate its jurisdiction during the pendency of a rate proceeding
15 before the utility commission. The municipality may not surrender
16 its jurisdiction again until the second anniversary of the date on
17 which the municipality reinstates jurisdiction.

18 (d) The utility commission shall have exclusive appellate
19 jurisdiction to review orders or ordinances of those municipalities
20 as provided in this chapter.

21 (e) The utility commission shall have exclusive original
22 jurisdiction over water and sewer utility rates, operations, and
23 services not within the incorporated limits of a municipality
24 exercising exclusive original jurisdiction over those rates,
25 operations, and services as provided in this chapter.

26 (f) This subchapter does not give the utility commission
27 power or jurisdiction to regulate or supervise the rates or service

1 of a utility owned and operated by a municipality, directly or
2 through a municipally owned corporation, within its corporate
3 limits or to affect or limit the power, jurisdiction, or duties of a
4 municipality that regulates land and supervises water and sewer
5 utilities within its corporate limits, except as provided by this
6 code.

7 SECTION 2.15. Sections 13.043(a), (b), (c), (e), (f), (g),
8 (h), and (j), Water Code, are amended to read as follows:

9 (a) Any party to a rate proceeding before the governing body
10 of a municipality may appeal the decision of the governing body to
11 the utility commission. This subsection does not apply to a
12 municipally owned utility. An appeal under this subsection must be
13 initiated within 90 days after the date of notice of the final
14 decision by the governing body, or within 30 days if the appeal
15 relates to the rates of a Class A utility, by filing a petition for
16 review with the utility commission and by serving copies on all
17 parties to the original rate proceeding. The utility commission
18 shall hear the appeal de novo and shall fix in its final order the
19 rates the governing body should have fixed in the action from which
20 the appeal was taken and may include reasonable expenses incurred
21 in the appeal proceedings. The utility commission may establish
22 the effective date for the utility commission's rates at the
23 original effective date as proposed by the utility provider and may
24 order refunds or allow a surcharge to recover lost revenues. The
25 utility commission may consider only the information that was
26 available to the governing body at the time the governing body made
27 its decision and evidence of reasonable expenses incurred in the

1 appeal proceedings.

2 (b) Ratepayers of the following entities may appeal the
3 decision of the governing body of the entity affecting their water,
4 drainage, or sewer rates to the utility commission:

5 (1) a nonprofit water supply or sewer service
6 corporation created and operating under Chapter 67;

7 (2) a utility under the jurisdiction of a municipality
8 inside the corporate limits of the municipality;

9 (3) a municipally owned utility, if the ratepayers
10 reside outside the corporate limits of the municipality;

11 (4) a district or authority created under Article III,
12 Section 52, or Article XVI, Section 59, of the Texas Constitution
13 that provides water or sewer service to household users; and

14 (5) a utility owned by an affected county, if the
15 ratepayer's rates are actually or may be adversely affected. For
16 the purposes of this section ratepayers who reside outside the
17 boundaries of the district or authority shall be considered a
18 separate class from ratepayers who reside inside those boundaries.

19 (c) An appeal under Subsection (b) ~~[of this section]~~ must be
20 initiated by filing a petition for review with the utility
21 commission and the entity providing service within 90 days after
22 the effective day of the rate change or, if appealing under
23 Subdivision (b)(2) or (5) ~~[of this section]~~, within 90 days after
24 the date on which the governing body of the municipality or affected
25 county makes a final decision. The petition must be signed by the
26 lesser of 10,000 or 10 percent of those ratepayers whose rates have
27 been changed and who are eligible to appeal under Subsection (b) ~~[of~~

~~this section~~].

(e) In an appeal under Subsection (b) ~~[of this section]~~, the utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the service provider, may order refunds or allow a surcharge to recover lost revenues, and may allow recovery of reasonable expenses incurred by the retail public utility in the appeal proceedings. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings. The rates established by the utility commission in an appeal under Subsection (b) ~~[of this section]~~ remain in effect until the first anniversary of the effective date proposed by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless the utility commission determines that a financial hardship exists.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the utility commission a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after the date of notice of the decision is received from the provider of

1 water or sewer service by the filing of a petition by the retail
2 public utility.

3 (g) An applicant for service from an affected county or a
4 water supply or sewer service corporation may appeal to the utility
5 commission a decision of the county or water supply or sewer service
6 corporation affecting the amount to be paid to obtain service other
7 than the regular membership or tap fees. In addition to the factors
8 specified under Subsection (j), in an appeal brought under this
9 subsection the utility commission shall determine whether the
10 amount paid by the applicant is consistent with the tariff of the
11 water supply or sewer service corporation and is reasonably related
12 to the cost of installing on-site and off-site facilities to
13 provide service to that applicant. If the utility commission finds
14 the amount charged to be clearly unreasonable, it shall establish
15 the fee to be paid for that applicant. An appeal under this
16 subsection must be initiated within 90 days after the date written
17 notice is provided to the applicant or member of the decision of an
18 affected county or water supply or sewer service corporation
19 relating to the applicant's initial request for that service. A
20 determination made by the utility commission on an appeal under
21 this subsection is binding on all similarly situated applicants for
22 service, and the utility commission may not consider other appeals
23 on the same issue until the applicable provisions of the tariff of
24 the water supply or sewer service corporation are amended.

25 (h) The utility commission may, on a motion by the utility
26 commission [~~executive director~~] or by the appellant under
27 Subsection (a), (b), or (f) [~~of this section~~], establish interim

1 rates to be in effect until a final decision is made.

2 (j) In an appeal under this section, the utility commission
3 shall ensure that every rate made, demanded, or received by any
4 retail public utility or by any two or more retail public utilities
5 jointly shall be just and reasonable. Rates shall not be
6 unreasonably preferential, prejudicial, or discriminatory but
7 shall be sufficient, equitable, and consistent in application to
8 each class of customers. The utility commission shall use a
9 methodology that preserves the financial integrity of the retail
10 public utility. For agreements between municipalities the utility
11 commission shall consider the terms of any wholesale water or sewer
12 service agreement in an appellate rate proceeding.

13 SECTION 2.16. Section 13.044(b), Water Code, is amended to
14 read as follows:

15 (b) Notwithstanding the provisions of any resolution,
16 ordinance, or agreement, a district may appeal the rates imposed by
17 the municipality by filing a petition with the utility commission.
18 The utility commission shall hear the appeal de novo and the
19 municipality shall have the burden of proof to establish that the
20 rates are just and reasonable. The utility commission shall fix the
21 rates to be charged by the municipality and the municipality may not
22 increase such rates without the approval of the utility commission.

23 SECTION 2.17. Section 13.046, Water Code, is amended to
24 read as follows:

25 Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR
26 NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The
27 utility commission by rule shall establish a procedure that allows

1 a retail public utility that takes over the provision of services
2 for a nonfunctioning retail water or sewer utility service provider
3 to charge a reasonable rate for the services provided to the
4 customers of the nonfunctioning system and to bill the customers
5 for the services at that rate immediately to recover service costs.

6 (b) The rules must provide a streamlined process that the
7 retail public utility that takes over the nonfunctioning system may
8 use to apply to the utility commission for a ruling on the
9 reasonableness of the rates the utility is charging under
10 Subsection (a). The process must allow for adequate consideration
11 of costs for interconnection or other costs incurred in making
12 services available and of the costs that may necessarily be
13 incurred to bring the nonfunctioning system into compliance with
14 utility commission and commission rules.

15 (c) The utility commission shall provide a reasonable
16 period for the retail public utility that takes over the
17 nonfunctioning system to bring the nonfunctioning system into
18 compliance with utility commission and commission rules during
19 which the utility commission or the commission may not impose a
20 penalty for any deficiency in the system that is present at the time
21 the utility takes over the nonfunctioning system. The utility
22 commission must consult with the utility before determining the
23 period and may grant an extension of the period for good cause.

24 SECTION 2.18. Section 13.081, Water Code, is amended to
25 read as follows:

26 Sec. 13.081. FRANCHISES. This chapter may not be construed
27 as in any way limiting the rights and powers of a municipality to

1 grant or refuse franchises to use the streets and alleys within its
2 limits and to make the statutory charges for their use, but no
3 provision of any franchise agreement may limit or interfere with
4 any power conferred on the utility commission by this chapter. If a
5 municipality performs regulatory functions under this chapter, it
6 may make such other charges as may be provided in the applicable
7 franchise agreement, together with any other charges permitted by
8 this chapter.

9 SECTION 2.19. Section 13.082, Water Code, is amended to
10 read as follows:

11 Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT
12 AREAS. (a) Notwithstanding any other provision of this section,
13 municipalities shall continue to regulate each kind of local
14 utility service inside their boundaries until the utility
15 commission has assumed jurisdiction over the respective utility
16 pursuant to this chapter.

17 (b) If a municipality does not surrender its jurisdiction,
18 local utility service within the boundaries of the municipality
19 shall be exempt from regulation by the utility commission under
20 this chapter to the extent that this chapter applies to local
21 service, and the municipality shall have, regarding service within
22 its boundaries, the right to exercise the same regulatory powers
23 under the same standards and rules as the utility commission or
24 other standards and rules not inconsistent with them. The utility
25 commission's rules relating to service and response to requests for
26 service for utilities operating within a municipality's corporate
27 limits apply unless the municipality adopts its own rules.

1 (c) Notwithstanding any election, the utility commission
2 may consider water and sewer utilities' revenues and return on
3 investment in exempt areas in fixing rates and charges in nonexempt
4 areas and may also exercise the powers conferred necessary to give
5 effect to orders under this chapter for the benefit of nonexempt
6 areas. Likewise, in fixing rates and charges in the exempt area,
7 the governing body may consider water and sewer utilities' revenues
8 and return on investment in nonexempt areas.

9 (d) Utilities serving exempt areas are subject to the
10 reporting requirements of this chapter. Those reports and tariffs
11 shall be filed with the governing body of the municipality as well
12 as with the utility commission.

13 (e) This section does not limit the duty and power of the
14 utility commission to regulate service and rates of municipally
15 regulated water and sewer utilities for service provided to other
16 areas in Texas.

17 SECTION 2.20. Section 13.085, Water Code, is amended to
18 read as follows:

19 Sec. 13.085. ASSISTANCE BY UTILITY COMMISSION. On request,
20 the utility commission may advise and assist municipalities and
21 affected counties in connection with questions and proceedings
22 arising under this chapter. This assistance may include aid to
23 municipalities or an affected county in connection with matters
24 pending before the utility commission, the courts, the governing
25 body of any municipality, or the commissioners court of an affected
26 county, including making members of the staff available to them as
27 witnesses and otherwise providing evidence.

SECTION 2.21. Section 13.087(c), Water Code, is amended to read as follows:

(c) Notwithstanding any other provision of this chapter, the utility commission has jurisdiction to enforce this section.

SECTION 2.22. Sections 13.131(a), (b), (c), and (e), Water Code, are amended to read as follows:

(a) Every water and sewer utility shall keep and render to the regulatory authority in the manner and form prescribed by the utility commission uniform accounts of all business transacted. The utility commission may also prescribe forms of books, accounts, records, and memoranda to be kept by those utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of money, and any other forms, records, and memoranda that in the judgment of the utility commission may be necessary to carry out this chapter.

(b) In the case of a utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by that agency may be considered a sufficient compliance with the system prescribed by the utility commission. However, the utility commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the utility commission for a utility or class of utilities may not conflict or be inconsistent with the systems and forms established by a federal agency for that utility

1 or class of utilities.

2 (c) The utility commission shall fix proper and adequate
3 rates and methods of depreciation, amortization, or depletion of
4 the several classes of property of each utility and shall require
5 every utility to carry a proper and adequate depreciation account
6 in accordance with those rates and methods and with any other rules
7 the utility commission prescribes. Rules adopted under this
8 subsection must require the book cost less net salvage of
9 depreciable utility plant retired to be charged in its entirety to
10 the accumulated depreciation account in a manner consistent with
11 accounting treatment of regulated electric and gas utilities in
12 this state. Those rates, methods, and accounts shall be utilized
13 uniformly and consistently throughout the rate-setting and appeal
14 proceedings.

15 (e) Every utility is required to keep and render its books,
16 accounts, records, and memoranda accurately and faithfully in the
17 manner and form prescribed by the utility commission and to comply
18 with all directions of the regulatory authority relating to those
19 books, accounts, records, and memoranda. The regulatory authority
20 may require the examination and audit of all accounts.

21 SECTION 2.23. Section 13.132, Water Code, is amended to
22 read as follows:

23 Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The
24 utility commission may:

25 (1) require that water and sewer utilities report to
26 it any information relating to themselves and affiliated interests
27 both inside and outside this state that it considers useful in the

1 administration of this chapter, including any information relating
2 to a transaction between the utility and an affiliated interest
3 inside or outside this state, to the extent that the transaction is
4 subject to the utility commission's jurisdiction;

5 (2) establish forms for all reports;

6 (3) determine the time for reports and the frequency
7 with which any reports are to be made;

8 (4) require that any reports be made under oath;

9 (5) require that a copy of any contract or arrangement
10 between any utility and any affiliated interest be filed with it and
11 require that such a contract or arrangement that is not in writing
12 be reduced to writing;

13 (6) require that a copy of any report filed with any
14 federal agency or any governmental agency or body of any other state
15 be filed with it; and

16 (7) require that a copy of annual reports showing all
17 payments of compensation, other than salary or wages subject to the
18 withholding of federal income tax, made to residents of Texas, or
19 with respect to legal, administrative, or legislative matters in
20 Texas, or for representation before the Texas Legislature or any
21 governmental agency or body be filed with it.

22 (b) On the request of the governing body of any
23 municipality, the utility commission may provide sufficient staff
24 members to advise and consult with the municipality on any pending
25 matter.

26 SECTION 2.24. Section 13.1325, Water Code, is amended to
27 read as follows:

1 Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On
 2 request, the utility commission [~~state agency with jurisdiction~~
 3 ~~over rates charged by water and sewer utilities~~] shall provide, at a
 4 reasonable cost, electronic copies of or Internet access to all
 5 information provided to the utility commission [~~agency~~] under
 6 Sections 13.016 and [~~7~~] 13.043 [~~7~~] and Subchapter F [~~13.187~~] to the
 7 extent that the information is available and is not confidential.
 8 Copies of all information provided to the utility commission
 9 [~~agency~~] shall be provided to the Office of Public Utility Counsel,
 10 on request, at no cost to the office.

11 SECTION 2.25. Section 13.133(b), Water Code, is amended to
 12 read as follows:

13 (b) The regulatory authority may require, by order or
 14 subpoena served on any utility, the production within this state at
 15 the time and place it may designate of any books, accounts, papers,
 16 or records kept by that utility outside the state or verified copies
 17 of them if the regulatory authority [~~commission~~] so orders. A
 18 utility failing or refusing to comply with such an order or subpoena
 19 violates this chapter.

20 SECTION 2.26. Section 13.136, Water Code, is amended by
 21 amending Subsections (b) and (c) and adding Subsection (b-1) to
 22 read as follows:

23 (b) The utility commission by rule shall require each [~~Each~~]
 24 utility to annually [~~shall~~] file a service, [~~and~~] financial, and
 25 normalized earnings report in a form and at times specified by
 26 utility commission rule. The report must include information
 27 sufficient to enable the utility commission to properly monitor

1 utilities in this state. The utility commission shall make
2 available to the public information in the report the utility does
3 not file as confidential.

4 (b-1) The utility commission shall provide copies of a
5 report described by Subsection (b) that include information filed
6 as confidential to the Office of Public Utility Counsel on request,
7 at no cost to the office.

8 (c) Every water supply or sewer service corporation shall
9 file with the utility commission tariffs showing all rates that are
10 subject to the appellate jurisdiction of the utility commission and
11 that are in force at the time for any utility service, product, or
12 commodity offered. Every water supply or sewer service corporation
13 shall file with and as a part of those tariffs all rules and
14 regulations relating to or affecting the rates, utility service,
15 product, or commodity furnished. The filing required under this
16 subsection shall be for informational purposes only.

17 SECTION 2.27. Section 13.137, Water Code, is amended to
18 read as follows:

19 Sec. 13.137. OFFICE AND OTHER BUSINESS LOCATIONS OF
20 UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall:

21 (1) make available and notify its customers of a
22 business location where its customers may make payments to prevent
23 disconnection of or to restore service:

24 (A) in each county in which the utility provides
25 service; or

26 (B) not more than 20 miles from the residence of
27 any residential customer if there is no location to receive

1 payments in the county; and

2 (2) have an office in a county of this state or in the
3 immediate area in which its property or some part of its property is
4 located in which it shall keep all books, accounts, records, and
5 memoranda required by the utility commission to be kept in this
6 state.

7 (b) The utility commission by rule may provide for waiving
8 the requirements of Subsection (a)(1) for a utility for which
9 meeting those requirements would cause a rate increase or otherwise
10 harm or inconvenience customers. The rules must provide for an
11 additional 14 days to be given for a customer to pay before a
12 utility that is granted a waiver may disconnect service for late
13 payment.

14 (c) Books, accounts, records, or memoranda required by the
15 regulatory authority to be kept in the state may not be removed from
16 the state, except on conditions prescribed by the utility
17 commission.

18 SECTION 2.28. Section 13.139(b), Water Code, is amended to
19 read as follows:

20 (b) The governing body of a municipality, as the regulatory
21 authority for public utilities operating within its corporate
22 limits, and the utility commission or the commission as the
23 regulatory authority for public utilities operating outside the
24 corporate limits of any municipality, after reasonable notice and
25 hearing on its own motion, may:

26 (1) ascertain and fix just and reasonable standards,
27 classifications, regulations, service rules, minimum service

standards or practices to be observed and followed with respect to the service to be furnished;

(2) ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, or other condition pertaining to the supply of the service;

(3) prescribe reasonable regulations for the examination and testing of the service and for the measurement of service; and

(4) establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments, and equipment used for the measurement of any utility service.

SECTION 2.29. Section 13.1395, Water Code, is amended by adding Subsection (m) to read as follows:

(m) The commission shall coordinate with the utility commission in the administration of this section.

SECTION 2.30. Sections 13.1396(b), (c), and (f), Water Code, are amended to read as follows:

(b) An affected utility shall submit to the office of emergency management of each county in which the utility has more than one customer, the utility commission [~~Public Utility Commission of Texas~~], and the office of emergency management of the governor a copy of:

(1) the affected utility's emergency preparedness plan approved under Section 13.1395; and

(2) the commission's notification to the affected utility that the plan is accepted.

1 (c) Each affected utility shall submit to the utility
2 commission, each electric utility that provides transmission and
3 distribution service to the affected utility, each retail electric
4 provider that sells electric power to the affected utility, the
5 office of emergency management of each county in which the utility
6 has water and wastewater facilities that qualify for critical load
7 status under rules adopted by the utility commission [~~Public~~
8 ~~Utility Commission of Texas, the Public Utility Commission of~~
9 ~~Texas~~], and the division of emergency management of the governor:

10 (1) information identifying the location and
11 providing a general description of all water and wastewater
12 facilities that qualify for critical load status; and

13 (2) emergency contact information for the affected
14 utility, including:

15 (A) the person who will serve as a point of
16 contact and the person's telephone number;

17 (B) the person who will serve as an alternative
18 point of contact and the person's telephone number; and

19 (C) the affected utility's mailing address.

20 (f) Not later than May 1 of each year, each electric utility
21 and each retail electric provider shall determine whether the
22 facilities of the affected utility qualify for critical load status
23 under rules adopted by the utility commission [~~Public Utility~~
24 ~~Commission of Texas~~].

25 SECTION 2.31. Section 13.142(b), Water Code, is amended to
26 read as follows:

27 (b) The utility commission shall adopt rules concerning

1 payment of utility bills that are consistent with Chapter 2251,
2 Government Code.

3 SECTION 2.32. Section 13.144, Water Code, is amended to
4 read as follows:

5 Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A
6 district or authority created under Section 52, Article III, or
7 Section 59, Article XVI, Texas Constitution, a retail public
8 utility, a wholesale water service, or other person providing a
9 retail public utility with a wholesale water supply shall provide
10 the utility commission and the commission with a certified copy of
11 any wholesale water supply contract with a retail public utility
12 within 30 days after the date of the execution of the contract. The
13 submission must include the amount of water being supplied, term of
14 the contract, consideration being given for the water, purpose of
15 use, location of use, source of supply, point of delivery,
16 limitations on the reuse of water, a disclosure of any affiliated
17 interest between the parties to the contract, and any other
18 condition or agreement relating to the contract.

19 SECTION 2.33. Section 13.147(a), Water Code, is amended to
20 read as follows:

21 (a) A retail public utility providing water service may
22 contract with a retail public utility providing sewer service to
23 bill and collect the sewer service provider's fees and payments as
24 part of a consolidated process with the billing and collection of
25 the water service provider's fees and payments. The water service
26 provider may provide that service only for customers who are served
27 by both providers in an area covered by both providers'

1 certificates of public convenience and necessity. If the water
2 service provider refuses to enter into a contract under this
3 section or if the water service provider and sewer service provider
4 cannot agree on the terms of a contract, the sewer service provider
5 may petition the utility commission to issue an order requiring the
6 water service provider to provide that service.

7 SECTION 2.34. Section 13.181(b), Water Code, is amended to
8 read as follows:

9 (b) Subject to this chapter, the utility commission has all
10 authority and power of the state to ensure compliance with the
11 obligations of utilities under this chapter. For this purpose the
12 regulatory authority may fix and regulate rates of utilities,
13 including rules and regulations for determining the classification
14 of customers and services and for determining the applicability of
15 rates. A rule or order of the regulatory authority may not conflict
16 with the rulings of any federal regulatory body. The utility
17 commission may adopt rules which authorize a utility which is
18 permitted under Section 13.242(c) to provide service without a
19 certificate of public convenience and necessity to request or
20 implement a rate increase and operate according to rules,
21 regulations, and standards of service other than those otherwise
22 required under this chapter provided that rates are just and
23 reasonable for customers and the utility and that service is safe,
24 adequate, efficient, and reasonable.

25 SECTION 2.35. Sections 13.182(c) and (d), Water Code, are
26 amended to read as follows:

27 (c) For ratemaking purposes, the utility commission may

1 treat two or more municipalities served by a utility as a single
2 class wherever the utility commission considers that treatment to
3 be appropriate.

4 (d) The utility commission by rule shall establish a
5 preference that rates under a consolidated tariff be consolidated
6 by region. The regions under consolidated tariffs must be
7 determined on a case-by-case basis.

8 SECTION 2.36. Section 13.183(d), Water Code, is amended to
9 read as follows:

10 (d) A regulatory authority other than the utility
11 commission may not approve an acquisition adjustment for a system
12 purchased before the effective date of an ordinance authorizing
13 acquisition adjustments.

14 SECTION 2.37. Section 13.184(a), Water Code, is amended to
15 read as follows:

16 (a) Unless the utility commission establishes alternate
17 rate methodologies in accordance with Section 13.183(c), the
18 utility commission may not prescribe any rate that will yield more
19 than a fair return on the invested capital used and useful in
20 rendering service to the public. The governing body of a
21 municipality exercising its original jurisdiction over rates and
22 services may use alternate ratemaking methodologies established by
23 ordinance or by utility commission rule in accordance with Section
24 13.183(c). Unless the municipal regulatory authority uses
25 alternate ratemaking methodologies established by ordinance or by
26 utility commission rule in accordance with Section 13.183(c), it
27 may not prescribe any rate that will yield more than a fair return

on the invested capital used and useful in rendering service to the public.

SECTION 2.38. Sections 13.185(d) and (h), Water Code, are amended to read as follows:

(d) Net income is the total revenues of the utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall:

(1) base a utility's expenses on historic test year information adjusted for known and measurable changes, as determined by utility commission rules; and

(2) determine expenses and revenues in a manner consistent with Subsections (e) through (h) of this section.

(h) The regulatory authority may not include for ratemaking purposes:

(1) legislative advocacy expenses, whether made directly or indirectly, including legislative advocacy expenses included in trade association dues;

(2) costs of processing a refund or credit under this subchapter ~~[Section 13.187 of this chapter]~~; or

(3) any expenditure found by the regulatory authority to be unreasonable, unnecessary, or not in the public interest, including executive salaries, advertising expenses, legal expenses, and civil penalties or fines.

SECTION 2.39. Section 13.187, Water Code, is amended to read as follows:

Sec. 13.187. CLASS A UTILITIES: STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) This

1 section applies only to a Class A utility.

2 (a-1) A utility may not make changes in its rates except by
3 sending by mail or e-mail ~~[delivering]~~ a statement of intent to each
4 ratepayer and to ~~[with]~~ the regulatory authority having original
5 jurisdiction at least 35 ~~[60]~~ days before the effective date of the
6 proposed change. The utility may send the statement of intent to a
7 ratepayer by e-mail only if the ratepayer has agreed to receive
8 communications electronically. The effective date of the new rates
9 must be the first day of a billing period, and the new rates may not
10 apply to service received before the effective date of the new
11 rates. The statement of intent must include:

12 (1) the information required by the regulatory
13 authority's rules;

14 (2) a billing comparison regarding the existing water
15 rate and the new water rate computed for the use of:

16 (A) 10,000 gallons of water; and

17 (B) 30,000 gallons of water; ~~[and]~~

18 (3) a billing comparison regarding the existing sewer
19 rate and the new sewer rate computed for the use of 10,000 gallons,
20 unless the utility proposes a flat rate for sewer services; and

21 (4) a description of the process by which a ratepayer
22 may intervene in the ratemaking proceeding.

23 (b) The utility shall mail, send by e-mail, or deliver a [A]
24 copy of the statement of intent ~~[shall be mailed, sent by e-mail, or~~
25 ~~delivered]~~ to the Office of Public Utility Counsel, appropriate
26 offices of each affected municipality, and ~~[to]~~ any other affected
27 persons as required by the regulatory authority's rules.

1 (c) When the statement of intent is delivered, the utility
2 shall file with the regulatory authority an application to change
3 rates. The application must include information the regulatory
4 authority requires by rule and any appropriate cost and rate
5 schedules and written testimony supporting the requested rate
6 increase. If the utility fails to provide within a reasonable time
7 after the application is filed the necessary documentation or other
8 evidence that supports the costs and expenses that are shown in the
9 application, the regulatory authority may disallow the
10 nonsupported costs or expenses.

11 (d) Except as provided by Subsections [~~Subsection~~] (d-1)
12 and (e), if the application or the statement of intent is not
13 substantially complete or does not comply with the regulatory
14 authority's rules, it may be rejected and the effective date of the
15 rate change may be suspended until a properly completed application
16 is accepted by the regulatory authority and a proper statement of
17 intent is provided. The utility commission may also suspend the
18 effective date of any rate change if the utility does not have a
19 certificate of public convenience and necessity or a completed
20 application for a certificate or to transfer a certificate pending
21 before the utility commission or if the utility is delinquent in
22 paying the assessment and any applicable penalties or interest
23 required by Section 5.701(n) [~~of this code~~].

24 (d-1) After written notice to the utility, a local
25 regulatory authority may suspend the effective date of a rate
26 change for not more than 90 days from the proposed effective date[
27 ~~except that the suspension shall be extended by two days for each~~

1 ~~day a hearing exceeds 15 days~~]. If the local regulatory authority
 2 does not make a final determination on the proposed rate before the
 3 expiration of the ~~[applicable]~~ suspension period, the proposed rate
 4 shall be considered approved. This ~~[The]~~ approval is subject to the
 5 authority of the local regulatory authority thereafter to continue
 6 ~~[authority's continuation of]~~ a hearing in progress.

7 (e) After written notice to the utility, the utility
 8 commission may suspend the effective date of a rate change for not
 9 more than 150 days from the proposed effective date. If the utility
 10 commission does not make a final determination on the proposed rate
 11 before the expiration of the suspension period, the proposed rate
 12 shall be considered approved. This approval is subject to the
 13 authority of the utility commission thereafter to continue a
 14 hearing in progress ~~[If, before the 91st day after the effective~~
 15 ~~date of the rate change, the regulatory authority receives a~~
 16 ~~complaint from any affected municipality, or from the lesser of~~
 17 ~~1,000 or 10 percent of the ratepayers of the utility over whose~~
 18 ~~rates the regulatory authority has original jurisdiction, the~~
 19 ~~regulatory authority shall set the matter for hearing]~~.

20 (e-1) The 150-day period described by Subsection (e) shall
 21 be extended two days for each day a hearing exceeds 15 days.

22 (f) The regulatory authority shall, not later than the 30th
 23 day after the effective date of the change, begin a hearing to
 24 determine the propriety of the change ~~[may set the matter for~~
 25 ~~hearing on its own motion at any time within 120 days after the~~
 26 ~~effective date of the rate change]~~. If the regulatory authority is
 27 the utility commission, the utility commission may refer the matter

1 to the State Office of Administrative Hearings as provided by
2 utility commission rules [~~If more than half of the ratepayers of the~~
3 ~~utility receive service in a county with a population of more than~~
4 ~~3.3 million, the hearing must be held at a location in that county~~].

5 (g) A local regulatory authority [~~The~~] hearing described by
6 this section may be informal.

7 (g-1) If the regulatory authority is the utility
8 commission, the utility commission shall give reasonable notice of
9 the hearing, including notice to the governing body of each
10 affected municipality and county. The utility is not required to
11 provide a formal answer or file any other formal pleading in
12 response to the notice, and the absence of an answer does not affect
13 an order for a hearing.

14 (h) If, after hearing, the regulatory authority finds the
15 rates currently being charged or those proposed to be charged are
16 unreasonable or in violation of law, the regulatory authority shall
17 determine the rates to be charged by the utility and shall fix the
18 rates by order served on the utility.

19 (i) A utility may put a changed rate into effect throughout
20 the area in which the utility sought to change its rates, including
21 an area over which the utility commission is exercising appellate
22 or original jurisdiction, by filing a bond with the utility
23 commission if the suspension period has been extended under
24 Subsection (e-1) and the utility commission fails to make a final
25 determination before the 151st day after the date the rate change
26 would otherwise be effective.

27 (j) The bonded rate may not exceed the proposed rate. The

1 bond must be payable to the utility commission in an amount, in a
2 form, and with a surety approved by the utility commission and
3 conditioned on refund ~~[The regulatory authority, pending final~~
4 ~~action in a rate proceeding, may order the utility to deposit all or~~
5 ~~part of the rate increase received or to be received into an escrow~~
6 ~~account with a financial institution approved by the regulatory~~
7 ~~authority].~~

8 (k) Unless otherwise agreed to by the parties to the rate
9 proceeding, the utility shall refund or credit against future
10 bills:

11 (1) all sums collected under the bonded rates ~~[during~~
12 ~~the pendency of the rate proceeding]~~ in excess of the rate finally
13 ordered; and

14 (2) ~~[plus]~~ interest on those sums at the current
15 interest rate as determined by the regulatory authority.

16 ~~[(j) For good cause shown, the regulatory authority may~~
17 ~~authorize the release of funds to the utility from the escrow~~
18 ~~account during the pendency of the proceeding.~~

19 ~~[(k) If the regulatory authority receives at least the~~
20 ~~number of complaints from ratepayers required for the regulatory~~
21 ~~authority to set a hearing under Subsection (e), the regulatory~~
22 ~~authority may, pending the hearing and a decision, suspend the date~~
23 ~~the rate change would otherwise be effective. Except as provided by~~
24 ~~Subsection (d-1), the proposed rate may not be suspended for longer~~
25 ~~than:~~

26 ~~[(1) 90 days by a local regulatory authority, or~~

27 ~~[(2) 150 days by the commission.]~~

1 (1) At any time during the pendency of the rate proceeding
2 the regulatory authority may fix interim rates to remain in effect
3 during the applicable suspension period under Subsection (d-1) or
4 Subsections (e) and (e-1) or until a final determination is made on
5 the proposed rate. If the regulatory authority does not establish
6 interim rates, the rates in effect when the application described
7 by Subsection (c) was filed continue in effect during the
8 suspension period.

9 (m) If the regulatory authority sets a final rate that is
10 higher than the interim rate, the utility shall be allowed to
11 collect the difference between the interim rate and final rate
12 unless otherwise agreed to by the parties to the rate proceeding.

13 (n) For good cause shown, the regulatory authority may at
14 any time during the proceeding require the utility to refund money
15 collected under a proposed rate before the rate was suspended or an
16 interim rate was established to the extent the proposed rate
17 exceeds the existing rate or the interim rate.

18 (o) If a regulatory authority other than the utility
19 commission establishes interim rates or bonded rates [~~an escrow~~
20 ~~account~~], the regulatory authority must make a final determination
21 on the rates not later than the first anniversary of the effective
22 date of the interim rates or bonded [~~escrowed~~] rates or the rates
23 are automatically approved as requested by the utility.

24 (p) Except to implement a rate adjustment provision
25 approved by the regulatory authority by rule or ordinance, as
26 applicable, or to adjust the rates of a newly acquired utility
27 system, a utility or two or more utilities under common control and

ownership may not file a statement of intent to increase its rates more than once in a 12-month period, unless the regulatory authority determines that a financial hardship exists. If the regulatory authority requires the utility to deliver a corrected statement of intent, the utility is not considered to be in violation of the 12-month filing requirement.

SECTION 2.40. Subchapter F, Chapter 13, Water Code, is amended by adding Sections 13.1871 and 13.1872 to read as follows:

Sec. 13.1871. CLASS B UTILITIES: STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) Except as provided by Section 13.1872, this section applies only to a Class B utility.

(b) A utility may not make changes in its rates except by sending by mail or e-mail a statement of intent to each ratepayer and to the regulatory authority having original jurisdiction at least 35 days before the effective date of the proposed change. The utility may send the statement of intent to a ratepayer by e-mail only if the ratepayer has agreed to receive communications electronically. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include:

(1) the information required by the regulatory authority's rules;

(2) a billing comparison regarding the existing water rate and the new water rate computed for the use of:

(A) 10,000 gallons of water; and

1 (B) 30,000 gallons of water;

2 (3) a billing comparison regarding the existing sewer
3 rate and the new sewer rate computed for the use of 10,000 gallons,
4 unless the utility proposes a flat rate for sewer services; and

5 (4) a description of the process by which a ratepayer
6 may file a complaint under Subsection (i).

7 (c) The utility shall mail, send by e-mail, or deliver a
8 copy of the statement of intent to the appropriate offices of each
9 affected municipality and to any other affected persons as required
10 by the regulatory authority's rules.

11 (d) When the statement of intent is delivered, the utility
12 shall file with the regulatory authority an application to change
13 rates. The application must include information the regulatory
14 authority requires by rule and any appropriate cost and rate
15 schedules supporting the requested rate increase. In adopting
16 rules relating to the information required in the application, the
17 utility commission shall ensure that a utility can file a less
18 burdensome and complex application than is required of a Class A
19 utility. If the utility fails to provide within a reasonable time
20 after the application is filed the necessary documentation or other
21 evidence that supports the costs and expenses that are shown in the
22 application, the regulatory authority may disallow the
23 nonsupported costs or expenses.

24 (e) Except as provided by Subsection (f) or (g), if the
25 application or the statement of intent is not substantially
26 complete or does not comply with the regulatory authority's rules,
27 it may be rejected and the effective date of the rate change may be

1 suspended until a properly completed application is accepted by the
2 regulatory authority and a proper statement of intent is provided.
3 The utility commission may also suspend the effective date of any
4 rate change if the utility does not have a certificate of public
5 convenience and necessity or a completed application for a
6 certificate or to transfer a certificate pending before the utility
7 commission or if the utility is delinquent in paying the assessment
8 and any applicable penalties or interest required by Section
9 5.701(n).

10 (f) After written notice to the utility, a local regulatory
11 authority may suspend the effective date of a rate change for not
12 more than 90 days from the proposed effective date. If the local
13 regulatory authority does not make a final determination on the
14 proposed rate before the expiration of the suspension period, the
15 proposed rate shall be considered approved. This approval is
16 subject to the authority of the local regulatory authority
17 thereafter to continue a hearing in progress.

18 (g) After written notice to the utility, the utility
19 commission may suspend the effective date of a rate change for not
20 more than 205 days from the proposed effective date. If the utility
21 commission does not make a final determination on the proposed rate
22 before the expiration of the suspension period, the proposed rate
23 shall be considered approved. This approval is subject to the
24 authority of the utility commission thereafter to continue a
25 hearing in progress.

26 (h) The 205-day period described by Subsection (g) shall be
27 extended by two days for each day a hearing exceeds 15 days.

1 (i) If, before the 91st day after the effective date of the
2 rate change, the regulatory authority receives a complaint from any
3 affected municipality, or from the lesser of 1,000 or 10 percent of
4 the ratepayers of the utility over whose rates the regulatory
5 authority has original jurisdiction, the regulatory authority
6 shall set the matter for hearing.

7 (j) If the regulatory authority receives at least the number
8 of complaints from ratepayers required for the regulatory authority
9 to set a hearing under Subsection (i), the regulatory authority
10 may, pending the hearing and a decision, suspend the date the rate
11 change would otherwise be effective. Except as provided by
12 Subsection (h), the proposed rate may not be suspended for longer
13 than:

14 (1) 90 days by a local regulatory authority; or

15 (2) 205 days by the utility commission.

16 (k) The regulatory authority may set the matter for hearing
17 on its own motion at any time within 120 days after the effective
18 date of the rate change.

19 (l) The hearing may be informal.

20 (m) The regulatory authority shall give reasonable notice
21 of the hearing, including notice to the governing body of each
22 affected municipality and county. The utility is not required to
23 provide a formal answer or file any other formal pleading in
24 response to the notice, and the absence of an answer does not affect
25 an order for a hearing.

26 (n) The utility shall mail notice of the hearing to each
27 ratepayer before the hearing. The notice must include a

1 description of the process by which a ratepayer may intervene in the
2 ratemaking proceeding.

3 (o) If, after hearing, the regulatory authority finds the
4 rates currently being charged or those proposed to be charged are
5 unreasonable or in violation of law, the regulatory authority shall
6 determine the rates to be charged by the utility and shall fix the
7 rates by order served on the utility.

8 (p) A utility may put a changed rate into effect throughout
9 the area in which the utility sought to change its rates, including
10 an area over which the utility commission is exercising appellate
11 or original jurisdiction, by filing a bond with the utility
12 commission if the suspension period has been extended under
13 Subsection (h) and the utility commission fails to make a final
14 determination before the 206th day after the date the rate change
15 would otherwise be effective.

16 (q) The bonded rate may not exceed the proposed rate. The
17 bond must be payable to the utility commission in an amount, in a
18 form, and with a surety approved by the utility commission and
19 conditioned on refund.

20 (r) Unless otherwise agreed to by the parties to the rate
21 proceeding, the utility shall refund or credit against future
22 bills:

23 (1) all sums collected under the bonded rates in
24 excess of the rate finally ordered; and

25 (2) interest on those sums at the current interest
26 rate as determined by the regulatory authority.

27 (s) At any time during the pendency of the rate proceeding

the regulatory authority may fix interim rates to remain in effect during the applicable suspension period under Subsection (f) or Subsections (g) and (h) or until a final determination is made on the proposed rate. If the regulatory authority does not establish interim rates, the rates in effect when the application described by Subsection (d) was filed continue in effect during the suspension period.

(t) If the regulatory authority sets a final rate that is higher than the interim rate, the utility shall be allowed to collect the difference between the interim rate and final rate unless otherwise agreed to by the parties to the rate proceeding.

(u) For good cause shown, the regulatory authority may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

(v) If a regulatory authority other than the utility commission establishes interim rates or bonded rates, the regulatory authority must make a final determination on the rates not later than the first anniversary of the effective date of the interim rates or bonded rates or the rates are automatically approved as requested by the utility.

(w) Except to implement a rate adjustment provision approved by the regulatory authority by rule or ordinance, as applicable, or to adjust the rates of a newly acquired utility system, a utility or two or more utilities under common control and ownership may not file a statement of intent to increase its rates

more than once in a 12-month period, unless the regulatory authority determines that a financial hardship exists. If the regulatory authority requires the utility to deliver a corrected statement of intent, the utility is not considered to be in violation of the 12-month filing requirement.

Sec. 13.1872. CLASS C UTILITIES: RATE ADJUSTMENT.

(a) This section applies only to a Class C utility.

(b) For purposes of this section, "price index" means an appropriate price index designated annually by the utility commission for the purposes of this section.

(c) A utility may not make changes in its rates except by:

(1) filing an application for a rate adjustment under the procedures described by Subsection (e) and sending by mail, or by e-mail if the ratepayer has agreed to receive communications electronically, a notice to each ratepayer describing the proposed rate adjustment at least 30 days before the effective date of the proposed change; or

(2) complying with the procedures to change rates described by Section 13.1871.

(d) The utility shall mail, send by e-mail, or deliver a copy of the application to the appropriate offices of each affected municipality and to any other affected persons as required by the regulatory authority's rules.

(e) The utility commission by rule shall adopt procedures to allow a utility to receive without a hearing an annual rate adjustment based on changes in the price index. The rules must:

(1) include standard language to be included in the

1 notice described by Subsection (c)(1) describing the rate
2 adjustment process; and

3 (2) provide that an annual rate adjustment described
4 by this section may not result in a rate increase to any class or
5 category of ratepayer of more than the lesser of:

6 (A) five percent; or

7 (B) the percentage increase in the price index
8 between the year preceding the year in which the utility requests
9 the adjustment and the year in which the utility requests the
10 adjustment.

11 (f) A utility may adjust the utility's rates using the
12 procedures adopted under Subsection (e) not more than once each
13 year and not more than four times between rate proceedings
14 described by Section 13.1871.

15 SECTION 2.41. Section 13.188, Water Code, is amended to
16 read as follows:

17 Sec. 13.188. ADJUSTMENT FOR CHANGE IN ENERGY COSTS. (a)
18 Notwithstanding any other provision in this chapter, the utility
19 commission by rule shall adopt a procedure allowing a utility to
20 file with the utility commission an application to timely adjust
21 the utility's rates to reflect an increase or decrease in
22 documented energy costs in a pass through clause. The utility
23 commission, by rule, shall require the pass through of documented
24 decreases in energy costs within a reasonable time. The pass
25 through, whether a decrease or increase, shall be implemented on no
26 later than an annual basis, unless the utility commission
27 determines a special circumstance applies.

1 (b) Notwithstanding any other provision to the contrary,
2 this adjustment is an uncontested matter not subject to a contested
3 case hearing. However, the utility commission [~~executive director~~]
4 shall hold an uncontested public meeting:

5 (1) on the request of a member of the legislature who
6 represents the area served by the water and sewer utility; or

7 (2) if the utility commission [~~executive director~~]
8 determines that there is substantial public interest in the matter.

9 (c) A proceeding under this section is not a rate case and
10 Sections [~~Section~~] 13.187, 13.1871, and 13.1872 do [~~does~~] not
11 apply.

12 SECTION 2.42. Sections 13.241(a), (d), and (e), Water Code,
13 are amended to read as follows:

14 (a) In determining whether to grant or amend a certificate
15 of public convenience and necessity, the utility commission shall
16 ensure that the applicant possesses the financial, managerial, and
17 technical capability to provide continuous and adequate service.

18 (d) Before the utility commission grants a new certificate
19 of convenience and necessity for an area which would require
20 construction of a physically separate water or sewer system, the
21 applicant must demonstrate to the utility commission that
22 regionalization or consolidation with another retail public
23 utility is not economically feasible.

24 (e) The utility commission by rule shall develop a
25 standardized method for determining under Section 13.246(f) which
26 of two or more retail public utilities or water supply or sewer
27 service corporations that apply for a certificate of public

1 convenience and necessity to provide water or sewer utility service
2 to an uncertificated area located in an economically distressed
3 area is more capable financially, managerially, and technically of
4 providing continuous and adequate service. In this subsection,
5 "economically distressed area" has the meaning assigned by Section
6 15.001.

7 SECTION 2.43. Sections 13.242(a) and (c), Water Code, are
8 amended to read as follows:

9 (a) Unless otherwise specified, a utility, a utility
10 operated by an affected county, or a water supply or sewer service
11 corporation may not in any way render retail water or sewer utility
12 service directly or indirectly to the public without first having
13 obtained from the utility commission a certificate that the present
14 or future public convenience and necessity will require that
15 installation, operation, or extension, and except as otherwise
16 provided by this subchapter, a retail public utility may not
17 furnish, make available, render, or extend retail water or sewer
18 utility service to any area to which retail water or sewer utility
19 service is being lawfully furnished by another retail public
20 utility without first having obtained a certificate of public
21 convenience and necessity that includes the area in which the
22 consuming facility is located.

23 (c) The utility commission may by rule allow a municipality
24 or utility or water supply corporation to render retail water
25 service without a certificate of public convenience and necessity
26 if the municipality has given notice under Section 13.255 [~~of this~~
27 ~~code~~] that it intends to provide retail water service to an area or

1 if the utility or water supply corporation has less than 15
2 potential connections and is not within the certificated area of
3 another retail public utility.

4 SECTION 2.44. Section 13.244, Water Code, is amended to
5 read as follows:

6 Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION;
7 EVIDENCE AND CONSENT. (a) To obtain a certificate of public
8 convenience and necessity or an amendment to a certificate, a
9 public utility or water supply or sewer service corporation shall
10 submit to the utility commission an application for a certificate
11 or for an amendment as provided by this section.

12 (b) Each public utility and water supply or sewer service
13 corporation shall file with the utility commission a map or maps
14 showing all its facilities and illustrating separately facilities
15 for production, transmission, and distribution of its services, and
16 each certificated retail public utility shall file with the utility
17 commission a map or maps showing any facilities, customers, or area
18 currently being served outside its certificated areas.

19 (c) Each applicant for a certificate or for an amendment
20 shall file with the utility commission evidence required by the
21 utility commission to show that the applicant has received the
22 required consent, franchise, or permit of the proper municipality
23 or other public authority.

24 (d) An application for a certificate of public convenience
25 and necessity or for an amendment to a certificate must contain:

26 (1) a description of the proposed service area by:

27 (A) a metes and bounds survey certified by a

1 licensed state land surveyor or a registered professional land
2 surveyor;

3 (B) the Texas State Plane Coordinate System;

4 (C) verifiable landmarks, including a road,
5 creek, or railroad line; or

6 (D) if a recorded plat of the area exists, lot and
7 block number;

8 (2) a description of any requests for service in the
9 proposed service area;

10 (3) a capital improvements plan, including a budget
11 and estimated timeline for construction of all facilities necessary
12 to provide full service to the entire proposed service area;

13 (4) a description of the sources of funding for all
14 facilities;

15 (5) to the extent known, a description of current and
16 projected land uses, including densities;

17 (6) a current financial statement of the applicant;

18 (7) according to the tax roll of the central appraisal
19 district for each county in which the proposed service area is
20 located, a list of the owners of each tract of land that is:

21 (A) at least 50 acres; and

22 (B) wholly or partially located within the
23 proposed service area; and

24 (8) any other item required by the utility commission.

25 SECTION 2.45. Sections 13.245(b), (c), (c-1), (c-2), (c-3),
26 and (e), Water Code, are amended to read as follows:

27 (b) Except as provided by Subsections (c), (c-1), and (c-2),

1 the utility commission may not grant to a retail public utility a
2 certificate of public convenience and necessity for a service area
3 within the boundaries or extraterritorial jurisdiction of a
4 municipality without the consent of the municipality. The
5 municipality may not unreasonably withhold the consent. As a
6 condition of the consent, a municipality may require that all water
7 and sewer facilities be designed and constructed in accordance with
8 the municipality's standards for facilities.

9 (c) If a municipality has not consented under Subsection (b)
10 before the 180th day after the date the municipality receives the
11 retail public utility's application, the utility commission shall
12 grant the certificate of public convenience and necessity without
13 the consent of the municipality if the utility commission finds
14 that the municipality:

- 15 (1) does not have the ability to provide service; or
16 (2) has failed to make a good faith effort to provide
17 service on reasonable terms and conditions.

18 (c-1) If a municipality has not consented under Subsection
19 (b) before the 180th day after the date a landowner or a retail
20 public utility submits to the municipality a formal request for
21 service according to the municipality's application requirements
22 and standards for facilities on the same or substantially similar
23 terms as provided by the retail public utility's application to the
24 utility commission, including a capital improvements plan required
25 by Section 13.244(d)(3) or a subdivision plat, the utility
26 commission may grant the certificate of public convenience and
27 necessity without the consent of the municipality if:

1 (1) the utility commission makes the findings required
2 by Subsection (c);

3 (2) the municipality has not entered into a binding
4 commitment to serve the area that is the subject of the retail
5 public utility's application to the utility commission before the
6 180th day after the date the formal request was made; and

7 (3) the landowner or retail public utility that
8 submitted the formal request has not unreasonably refused to:

9 (A) comply with the municipality's service
10 extension and development process; or

11 (B) enter into a contract for water or sewer
12 services with the municipality.

13 (c-2) If a municipality refuses to provide service in the
14 proposed service area, as evidenced by a formal vote of the
15 municipality's governing body or an official notification from the
16 municipality, the utility commission is not required to make the
17 findings otherwise required by this section and may grant the
18 certificate of public convenience and necessity to the retail
19 public utility at any time after the date of the formal vote or
20 receipt of the official notification.

21 (c-3) The utility commission must include as a condition of
22 a certificate of public convenience and necessity granted under
23 Subsection (c-1) or (c-2) that all water and sewer facilities be
24 designed and constructed in accordance with the municipality's
25 standards for water and sewer facilities.

26 (e) If the utility commission makes a decision under
27 Subsection (d) regarding the grant of a certificate of public

1 convenience and necessity without the consent of the municipality,
2 the municipality or the retail public utility may appeal the
3 decision to the appropriate state district court. The court shall
4 hear the petition within 120 days after the date the petition is
5 filed. On final disposition, the court may award reasonable fees to
6 the prevailing party.

7 SECTION 2.46. Sections 13.2451(b) and (c), Water Code, are
8 amended to read as follows:

9 (b) The utility commission may not extend a municipality's
10 certificate of public convenience and necessity beyond its
11 extraterritorial jurisdiction if an owner of land that is located
12 wholly or partly outside the extraterritorial jurisdiction elects
13 to exclude some or all of the landowner's property within a proposed
14 service area in accordance with Section 13.246(h). This subsection
15 does not apply to a transfer of a certificate as approved by the
16 utility commission.

17 (c) The utility commission, after notice to the
18 municipality and an opportunity for a hearing, may decertify an
19 area outside a municipality's extraterritorial jurisdiction if the
20 municipality does not provide service to the area on or before the
21 fifth anniversary of the date the certificate of public convenience
22 and necessity was granted for the area. This subsection does not
23 apply to a certificate of public convenience and necessity for an
24 area:

25 (1) that was transferred to a municipality on approval
26 of the utility commission; and

27 (2) in relation to which the municipality has spent

1 public funds.

2 SECTION 2.47. Section 13.246, Water Code, is amended to
3 read as follows:

4 Sec. 13.246. NOTICE AND HEARING; ISSUANCE OR REFUSAL;
5 FACTORS CONSIDERED. (a) If an application for a certificate of
6 public convenience and necessity or for an amendment to a
7 certificate is filed, the utility commission shall cause notice of
8 the application to be given to affected parties and to each county
9 and groundwater conservation district that is wholly or partly
10 included in the area proposed to be certified. If requested, the
11 utility commission shall fix a time and place for a hearing and give
12 notice of the hearing. Any person affected by the application may
13 intervene at the hearing.

14 (a-1) Except as otherwise provided by this subsection, in
15 addition to the notice required by Subsection (a), the utility
16 commission shall require notice to be mailed to each owner of a
17 tract of land that is at least 25 acres and is wholly or partially
18 included in the area proposed to be certified. Notice required
19 under this subsection must be mailed by first class mail to the
20 owner of the tract according to the most current tax appraisal rolls
21 of the applicable central appraisal district at the time the
22 utility commission received the application for the certificate or
23 amendment. Good faith efforts to comply with the requirements of
24 this subsection shall be considered adequate notice to landowners.
25 Notice under this subsection is not required for a matter filed with
26 the utility commission or the commission under:

27 (1) Section 13.248 or 13.255; or

1 (2) Chapter 65.

2 (b) The utility commission may grant applications and issue
3 certificates and amendments to certificates only if the utility
4 commission finds that a certificate or amendment is necessary for
5 the service, accommodation, convenience, or safety of the public.
6 The utility commission may issue a certificate or amendment as
7 requested, or refuse to issue it, or issue it for the construction
8 of only a portion of the contemplated system or facility or
9 extension, or for the partial exercise only of the right or
10 privilege and may impose special conditions necessary to ensure
11 that continuous and adequate service is provided.

12 (c) Certificates of public convenience and necessity and
13 amendments to certificates shall be granted by the utility
14 commission on a nondiscriminatory basis after consideration by the
15 utility commission of:

16 (1) the adequacy of service currently provided to the
17 requested area;

18 (2) the need for additional service in the requested
19 area, including whether any landowners, prospective landowners,
20 tenants, or residents have requested service;

21 (3) the effect of the granting of a certificate or of
22 an amendment on the recipient of the certificate or amendment, on
23 the landowners in the area, and on any retail public utility of the
24 same kind already serving the proximate area;

25 (4) the ability of the applicant to provide adequate
26 service, including meeting the standards of the commission, taking
27 into consideration the current and projected density and land use

1 of the area;

2 (5) the feasibility of obtaining service from an
3 adjacent retail public utility;

4 (6) the financial ability of the applicant to pay for
5 the facilities necessary to provide continuous and adequate service
6 and the financial stability of the applicant, including, if
7 applicable, the adequacy of the applicant's debt-equity ratio;

8 (7) environmental integrity;

9 (8) the probable improvement of service or lowering of
10 cost to consumers in that area resulting from the granting of the
11 certificate or amendment; and

12 (9) the effect on the land to be included in the
13 certificated area.

14 (d) The utility commission may require an applicant for a
15 certificate or for an amendment to provide a bond or other financial
16 assurance in a form and amount specified by the utility commission
17 to ensure that continuous and adequate utility service is provided.

18 (e) Where applicable, in addition to the other factors in
19 this section the utility commission shall consider the efforts of
20 the applicant:

21 (1) to extend service to any economically distressed
22 areas located within the service areas certificated to the
23 applicant; and

24 (2) to enforce the rules adopted under Section 16.343.

25 (f) If two or more retail public utilities or water supply
26 or sewer service corporations apply for a certificate of public
27 convenience and necessity to provide water or sewer utility service

1 to an uncertificated area located in an economically distressed
2 area and otherwise meet the requirements for obtaining a new
3 certificate, the utility commission shall grant the certificate to
4 the retail public utility or water supply or sewer service
5 corporation that is more capable financially, managerially, and
6 technically of providing continuous and adequate service.

7 (g) In this section, "economically distressed area" has the
8 meaning assigned by Section 15.001.

9 (h) Except as provided by Subsection (i), a landowner who
10 owns a tract of land that is at least 25 acres and that is wholly or
11 partially located within the proposed service area may elect to
12 exclude some or all of the landowner's property from the proposed
13 service area by providing written notice to the utility commission
14 before the 30th day after the date the landowner receives notice of
15 a new application for a certificate of public convenience and
16 necessity or for an amendment to an existing certificate of public
17 convenience and necessity. The landowner's election is effective
18 without a further hearing or other process by the utility
19 commission. If a landowner makes an election under this
20 subsection, the application shall be modified so that the electing
21 landowner's property is not included in the proposed service area.
22 An applicant for a certificate of public convenience and necessity
23 that has land removed from its proposed certificated service area
24 because of a landowner's election under this subsection may not be
25 required to provide service to the removed land for any reason,
26 including the violation of law or utility commission or commission
27 rules by the water or sewer system of another person.

1 (i) A landowner is not entitled to make an election under
2 Subsection (h) but is entitled to contest the inclusion of the
3 landowner's property in the proposed service area at a hearing held
4 by the utility commission regarding the application if the proposed
5 service area is located within the boundaries or extraterritorial
6 jurisdiction of a municipality with a population of more than
7 500,000 and the municipality or a utility owned by the municipality
8 is the applicant.

9 SECTION 2.48. Section 13.247(a), Water Code, is amended to
10 read as follows:

11 (a) If an area is within the boundaries of a municipality,
12 all retail public utilities certified or entitled to certification
13 under this chapter to provide service or operate facilities in that
14 area may continue and extend service in its area of public
15 convenience and necessity within the area pursuant to the rights
16 granted by its certificate and this chapter, unless the
17 municipality exercises its power of eminent domain to acquire the
18 property of the retail public utility under Subsection (d). Except
19 as provided by Section 13.255, a municipally owned or operated
20 utility may not provide retail water and sewer utility service
21 within the area certificated to another retail public utility
22 without first having obtained from the utility commission a
23 certificate of public convenience and necessity that includes the
24 areas to be served.

25 SECTION 2.49. Section 13.248, Water Code, is amended to
26 read as follows:

27 Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts

1 between retail public utilities designating areas to be served and
2 customers to be served by those retail public utilities, when
3 approved by the utility commission after public notice and hearing,
4 are valid and enforceable and are incorporated into the appropriate
5 areas of public convenience and necessity.

6 SECTION 2.50. Sections 13.250(b), (c), and (e), Water Code,
7 are amended to read as follows:

8 (b) Unless the utility commission issues a certificate that
9 neither the present nor future convenience and necessity will be
10 adversely affected, the holder of a certificate or a person who
11 possesses facilities used to provide utility service shall not
12 discontinue, reduce, or impair service to a certified service area
13 or part of a certified service area except for:

14 (1) nonpayment of charges for services provided by the
15 certificate holder or a person who possesses facilities used to
16 provide utility service;

17 (2) nonpayment of charges for sewer service provided
18 by another retail public utility under an agreement between the
19 retail public utility and the certificate holder or a person who
20 possesses facilities used to provide utility service or under a
21 utility commission-ordered arrangement between the two service
22 providers;

23 (3) nonuse; or

24 (4) other similar reasons in the usual course of
25 business.

26 (c) Any discontinuance, reduction, or impairment of
27 service, whether with or without approval of the utility

1 commission, shall be in conformity with and subject to conditions,
2 restrictions, and limitations that the utility commission
3 prescribes.

4 (e) Not later than the 48th hour after the hour in which a
5 utility files a bankruptcy petition, the utility shall report this
6 fact to the utility commission and the commission in writing.

7 SECTION 2.51. Section 13.2502(d), Water Code, is amended to
8 read as follows:

9 (d) This section does not limit or extend the jurisdiction
10 of the utility commission under Section 13.043(g).

11 SECTION 2.52. Section 13.251, Water Code, is amended to
12 read as follows:

13 Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.
14 Except as provided by Section 13.255 [~~of this code~~], a utility or a
15 water supply or sewer service corporation may not sell, assign, or
16 lease a certificate of public convenience and necessity or any
17 right obtained under a certificate unless the utility commission
18 has determined that the purchaser, assignee, or lessee is capable
19 of rendering adequate and continuous service to every consumer
20 within the certified area, after considering the factors under
21 Section 13.246(c) [~~of this code~~]. The sale, assignment, or lease
22 shall be on the conditions prescribed by the utility commission.

23 SECTION 2.53. Section 13.252, Water Code, is amended to
24 read as follows:

25 Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY.
26 If a retail public utility in constructing or extending a line,
27 plant, or system interferes or attempts to interfere with the

1 operation of a line, plant, or system of any other retail public
2 utility, or furnishes, makes available, renders, or extends retail
3 water or sewer utility service to any portion of the service area of
4 another retail public utility that has been granted or is not
5 required to possess a certificate of public convenience and
6 necessity, the utility commission may issue an order prohibiting
7 the construction, extension, or provision of service or prescribing
8 terms and conditions for locating the line, plant, or system
9 affected or for the provision of the service.

10 SECTION 2.54. Section 13.253, Water Code, is amended to
11 read as follows:

12 Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING
13 SERVICE. (a) After notice and hearing, the utility commission or
14 the commission may:

15 (1) order any retail public utility that is required
16 by law to possess a certificate of public convenience and necessity
17 or any retail public utility that possesses a certificate of public
18 convenience and necessity and is located in an affected county as
19 defined in Section 16.341 to:

20 (A) provide specified improvements in its
21 service in a defined area if service in that area is inadequate or
22 is substantially inferior to service in a comparable area and it is
23 reasonable to require the retail public utility to provide the
24 improved service; or

25 (B) develop, implement, and follow financial,
26 managerial, and technical practices that are acceptable to the
27 utility commission to ensure that continuous and adequate service

1 is provided to any areas currently certificated to the retail
2 public utility if the retail public utility has not provided
3 continuous and adequate service to any of those areas and, for a
4 utility, to provide financial assurance of the utility's ability to
5 operate the system in accordance with applicable laws and rules, in
6 the form of a bond or other financial assurance in a form and amount
7 specified by the utility commission;

8 (2) order two or more public utilities or water supply
9 or sewer service corporations to establish specified facilities for
10 interconnecting service;

11 (3) order a public utility or water supply or sewer
12 service corporation that has not demonstrated that it can provide
13 continuous and adequate service from its drinking water source or
14 sewer treatment facility to obtain service sufficient to meet its
15 obligation to provide continuous and adequate service on at least a
16 wholesale basis from another consenting utility service provider;
17 or

18 (4) issue an emergency order, with or without a
19 hearing, under Section 13.041.

20 (b) If the utility commission has reason to believe that
21 improvements and repairs to a water or sewer service system are
22 necessary to enable a retail public utility to provide continuous
23 and adequate service in any portion of its service area and the
24 retail public utility has provided financial assurance under
25 Section 341.0355, Health and Safety Code, or under this chapter,
26 the utility commission, after providing to the retail public
27 utility notice and an opportunity to be heard by the commissioners

1 at a [~~commission~~] meeting of the utility commission, may
2 immediately order specified improvements and repairs to the water
3 or sewer system, the costs of which may be paid by the bond or other
4 financial assurance in an amount determined by the utility
5 commission not to exceed the amount of the bond or financial
6 assurance. The order requiring the improvements may be an
7 emergency order if it is issued after the retail public utility has
8 had an opportunity to be heard [~~by the commissioners~~] at a
9 [~~commission~~] meeting of the utility commission. After notice and
10 hearing, the utility commission may require a retail public utility
11 to obligate additional money to replace the financial assurance
12 used for the improvements.

13 SECTION 2.55. Sections 13.254(a), (a-1), (a-2), (a-3),
14 (a-4), (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h),
15 Water Code, are amended to read as follows:

16 (a) The utility commission at any time after notice and
17 hearing may revoke or amend any certificate of public convenience
18 and necessity with the written consent of the certificate holder or
19 if the utility commission [~~it~~] finds that:

20 (1) the certificate holder has never provided, is no
21 longer providing, is incapable of providing, or has failed to
22 provide continuous and adequate service in the area, or part of the
23 area, covered by the certificate;

24 (2) in an affected county as defined in Section
25 16.341, the cost of providing service by the certificate holder is
26 so prohibitively expensive as to constitute denial of service,
27 provided that, for commercial developments or for residential

1 developments started after September 1, 1997, in an affected county
2 as defined in Section 16.341, the fact that the cost of obtaining
3 service from the currently certificated retail public utility makes
4 the development economically unfeasible does not render such cost
5 prohibitively expensive in the absence of other relevant factors;

6 (3) the certificate holder has agreed in writing to
7 allow another retail public utility to provide service within its
8 service area, except for an interim period, without amending its
9 certificate; or

10 (4) the certificate holder has failed to file a cease
11 and desist action pursuant to Section 13.252 within 180 days of the
12 date that it became aware that another retail public utility was
13 providing service within its service area, unless the certificate
14 holder demonstrates good cause for its failure to file such action
15 within the 180 days.

16 (a-1) As an alternative to decertification under Subsection
17 (a), the owner of a tract of land that is at least 50 acres and that
18 is not in a platted subdivision actually receiving water or sewer
19 service may petition the utility commission under this subsection
20 for expedited release of the area from a certificate of public
21 convenience and necessity so that the area may receive service from
22 another retail public utility. The fact that a certificate holder
23 is a borrower under a federal loan program is not a bar to a request
24 under this subsection for the release of the petitioner's land and
25 the receipt of services from an alternative provider. On the day
26 the petitioner submits the petition to the utility commission, the
27 petitioner shall send, via certified mail, a copy of the petition to

1 the certificate holder, who may submit information to the utility
2 commission to controvert information submitted by the petitioner.
3 The petitioner must demonstrate that:

4 (1) a written request for service, other than a
5 request for standard residential or commercial service, has been
6 submitted to the certificate holder, identifying:

7 (A) the area for which service is sought;

8 (B) the timeframe within which service is needed
9 for current and projected service demands in the area;

10 (C) the level and manner of service needed for
11 current and projected service demands in the area;

12 (D) the approximate cost for the alternative
13 provider to provide the service at the same level and manner that is
14 requested from the certificate holder;

15 (E) the flow and pressure requirements and
16 specific infrastructure needs, including line size and system
17 capacity for the required level of fire protection requested; and

18 (F) any additional information requested by the
19 certificate holder that is reasonably related to determination of
20 the capacity or cost for providing the service;

21 (2) the certificate holder has been allowed at least
22 90 calendar days to review and respond to the written request and
23 the information it contains;

24 (3) the certificate holder:

25 (A) has refused to provide the service;

26 (B) is not capable of providing the service on a
27 continuous and adequate basis within the timeframe, at the level,

1 at the approximate cost that the alternative provider is capable of
2 providing for a comparable level of service, or in the manner
3 reasonably needed or requested by current and projected service
4 demands in the area; or

5 (C) conditions the provision of service on the
6 payment of costs not properly allocable directly to the
7 petitioner's service request, as determined by the utility
8 commission; and

9 (4) the alternate retail public utility from which the
10 petitioner will be requesting service possesses the financial,
11 managerial, and technical capability to provide continuous and
12 adequate service within the timeframe, at the level, at the cost,
13 and in the manner reasonably needed or requested by current and
14 projected service demands in the area.

15 (a-2) A landowner is not entitled to make the election
16 described in Subsection (a-1) or (a-5) but is entitled to contest
17 under Subsection (a) the involuntary certification of its property
18 in a hearing held by the utility commission if the landowner's
19 property is located:

20 (1) within the boundaries of any municipality or the
21 extraterritorial jurisdiction of a municipality with a population
22 of more than 500,000 and the municipality or retail public utility
23 owned by the municipality is the holder of the certificate; or

24 (2) in a platted subdivision actually receiving water
25 or sewer service.

26 (a-3) Within 60 calendar days from the date the utility
27 commission determines the petition filed pursuant to Subsection

1 (a-1) to be administratively complete, the utility commission shall
2 grant the petition unless the utility commission makes an express
3 finding that the petitioner failed to satisfy the elements required
4 in Subsection (a-1) and supports its finding with separate findings
5 and conclusions for each element based solely on the information
6 provided by the petitioner and the certificate holder. The utility
7 commission may grant or deny a petition subject to terms and
8 conditions specifically related to the service request of the
9 petitioner and all relevant information submitted by the petitioner
10 and the certificate holder. In addition, the utility commission
11 may require an award of compensation as otherwise provided by this
12 section.

13 (a-4) Chapter 2001, Government Code, does not apply to any
14 petition filed under Subsection (a-1). The decision of the utility
15 commission on the petition is final after any reconsideration
16 authorized by the utility commission's rules and may not be
17 appealed.

18 (a-6) The utility commission shall grant a petition
19 received under Subsection (a-5) not later than the 60th day after
20 the date the landowner files the petition. The utility commission
21 may not deny a petition received under Subsection (a-5) based on the
22 fact that a certificate holder is a borrower under a federal loan
23 program. The utility commission may require an award of
24 compensation by the petitioner to a decertified retail public
25 utility that is the subject of a petition filed under Subsection
26 (a-5) as otherwise provided by this section.

27 (a-8) If a certificate holder has never made service

1 available through planning, design, construction of facilities, or
2 contractual obligations to serve the area a petitioner seeks to
3 have released under Subsection (a-1), the utility commission is not
4 required to find that the proposed alternative provider is capable
5 of providing better service than the certificate holder, but only
6 that the proposed alternative provider is capable of providing the
7 requested service.

8 (b) Upon written request from the certificate holder, the
9 utility commission [~~executive director~~] may cancel the certificate
10 of a utility or water supply corporation authorized by rule to
11 operate without a certificate of public convenience and necessity
12 under Section 13.242(c).

13 (c) If the certificate of any retail public utility is
14 revoked or amended, the utility commission may require one or more
15 retail public utilities with their consent to provide service in
16 the area in question. The order of the utility commission shall not
17 be effective to transfer property.

18 (d) A retail public utility may not in any way render retail
19 water or sewer service directly or indirectly to the public in an
20 area that has been decertified under this section without providing
21 compensation for any property that the utility commission
22 determines is rendered useless or valueless to the decertified
23 retail public utility as a result of the decertification.

24 (e) The determination of the monetary amount of
25 compensation, if any, shall be determined at the time another
26 retail public utility seeks to provide service in the previously
27 decertified area and before service is actually provided. The

1 utility commission shall ensure that the monetary amount of
2 compensation is determined not later than the 90th calendar day
3 after the date on which a retail public utility notifies the utility
4 commission of its intent to provide service to the decertified
5 area.

6 (f) The monetary amount shall be determined by a qualified
7 individual or firm serving as independent appraiser agreed upon by
8 the decertified retail public utility and the retail public utility
9 seeking to serve the area. The determination of compensation by the
10 independent appraiser shall be binding on the utility commission.
11 The costs of the independent appraiser shall be borne by the retail
12 public utility seeking to serve the area.

13 (g) For the purpose of implementing this section, the value
14 of real property owned and utilized by the retail public utility for
15 its facilities shall be determined according to the standards set
16 forth in Chapter 21, Property Code, governing actions in eminent
17 domain and the value of personal property shall be determined
18 according to the factors in this subsection. The factors ensuring
19 that the compensation to a retail public utility is just and
20 adequate shall include: the amount of the retail public utility's
21 debt allocable for service to the area in question; the value of the
22 service facilities of the retail public utility located within the
23 area in question; the amount of any expenditures for planning,
24 design, or construction of service facilities that are allocable to
25 service to the area in question; the amount of the retail public
26 utility's contractual obligations allocable to the area in
27 question; any demonstrated impairment of service or increase of

1 cost to consumers of the retail public utility remaining after the
2 decertification; the impact on future revenues lost from existing
3 customers; necessary and reasonable legal expenses and
4 professional fees; and other relevant factors. The utility
5 commission shall adopt rules governing the evaluation of these
6 factors.

7 (g-1) If the retail public utilities cannot agree on an
8 independent appraiser within 10 calendar days after the date on
9 which the retail public utility notifies the utility commission of
10 its intent to provide service to the decertified area, each retail
11 public utility shall engage its own appraiser at its own expense,
12 and each appraisal shall be submitted to the utility commission
13 within 60 calendar days. After receiving the appraisals, the
14 utility commission shall appoint a third appraiser who shall make a
15 determination of the compensation within 30 days. The
16 determination may not be less than the lower appraisal or more than
17 the higher appraisal. Each retail public utility shall pay half the
18 cost of the third appraisal.

19 (h) A certificate holder that has land removed from its
20 certificated service area in accordance with this section may not
21 be required, after the land is removed, to provide service to the
22 removed land for any reason, including the violation of law or
23 utility commission or commission rules by a water or sewer system of
24 another person.

25 SECTION 2.56. Sections 13.255(a), (b), (c), (d), (e),
26 (g-1), (k), (l), and (m), Water Code, are amended to read as
27 follows:

1 (a) In the event that an area is incorporated or annexed by a
 2 municipality, either before or after the effective date of this
 3 section, the municipality and a retail public utility that provides
 4 water or sewer service to all or part of the area pursuant to a
 5 certificate of convenience and necessity may agree in writing that
 6 all or part of the area may be served by a municipally owned
 7 utility, by a franchised utility, or by the retail public utility.
 8 In this section, the phrase "franchised utility" shall mean a
 9 retail public utility that has been granted a franchise by a
 10 municipality to provide water or sewer service inside municipal
 11 boundaries. The agreement may provide for single or dual
 12 certification of all or part of the area, for the purchase of
 13 facilities or property, and for such other or additional terms that
 14 the parties may agree on. If a franchised utility is to serve the
 15 area, the franchised utility shall also be a party to the agreement.
 16 The executed agreement shall be filed with the utility commission,
 17 and the utility commission, on receipt of the agreement, shall
 18 incorporate the terms of the agreement into the respective
 19 certificates of convenience and necessity of the parties to the
 20 agreement.

21 (b) If an agreement is not executed within 180 days after
 22 the municipality, in writing, notifies the retail public utility of
 23 its intent to provide service to the incorporated or annexed area,
 24 and if the municipality desires and intends to provide retail
 25 utility service to the area, the municipality, prior to providing
 26 service to the area, shall file an application with the utility
 27 commission to grant single certification to the municipally owned

1 water or sewer utility or to a franchised utility. If an
 2 application for single certification is filed, the utility
 3 commission shall fix a time and place for a hearing and give notice
 4 of the hearing to the municipality and franchised utility, if any,
 5 and notice of the application and hearing to the retail public
 6 utility.

7 (c) The utility commission shall grant single certification
 8 to the municipality. The utility commission shall also determine
 9 whether single certification as requested by the municipality would
 10 result in property of a retail public utility being rendered
 11 useless or valueless to the retail public utility, and shall
 12 determine in its order the monetary amount that is adequate and just
 13 to compensate the retail public utility for such property. If the
 14 municipality in its application has requested the transfer of
 15 specified property of the retail public utility to the municipality
 16 or to a franchised utility, the utility commission shall also
 17 determine in its order the adequate and just compensation to be paid
 18 for such property pursuant to the provisions of this section,
 19 including an award for damages to property remaining in the
 20 ownership of the retail public utility after single certification.
 21 The order of the utility commission shall not be effective to
 22 transfer property. A transfer of property may only be obtained
 23 under this section by a court judgment rendered pursuant to
 24 Subsection (d) or (e) [~~of this section~~]. The grant of single
 25 certification by the utility commission shall go into effect on the
 26 date the municipality or franchised utility, as the case may be,
 27 pays adequate and just compensation pursuant to court order, or

1 pays an amount into the registry of the court or to the retail
 2 public utility under Subsection (f). If the court judgment
 3 provides that the retail public utility is not entitled to any
 4 compensation, the grant of single certification shall go into
 5 effect when the court judgment becomes final. The municipality or
 6 franchised utility must provide to each customer of the retail
 7 public utility being acquired an individual written notice within
 8 60 days after the effective date for the transfer specified in the
 9 court judgment. The notice must clearly advise the customer of the
 10 identity of the new service provider, the reason for the transfer,
 11 the rates to be charged by the new service provider, and the
 12 effective date of those rates.

13 (d) In the event the final order of the utility commission
 14 is not appealed within 30 days, the municipality may request the
 15 district court of Travis County to enter a judgment consistent with
 16 the order of the utility commission. In such event, the court shall
 17 render a judgment that:

18 (1) transfers to the municipally owned utility or
 19 franchised utility title to property to be transferred to the
 20 municipally owned utility or franchised utility as delineated by
 21 the utility commission's final order and property determined by the
 22 utility commission to be rendered useless or valueless by the
 23 granting of single certification; and

24 (2) orders payment to the retail public utility of
 25 adequate and just compensation for the property as determined by
 26 the utility commission in its final order.

27 (e) Any party that is aggrieved by a final order of the

1 utility commission under this section may file an appeal with the
2 district court of Travis County within 30 days after the order
3 becomes final. The hearing in such an appeal before the district
4 court shall be by trial de novo on all issues. After the hearing, if
5 the court determines that the municipally owned utility or
6 franchised utility is entitled to single certification under the
7 provisions of this section, the court shall enter a judgment that:

8 (1) transfers to the municipally owned utility or
9 franchised utility title to property requested by the municipality
10 to be transferred to the municipally owned utility or franchised
11 utility and located within the singly certificated area and
12 property determined by the court or jury to be rendered useless or
13 valueless by the granting of single certification; and

14 (2) orders payment in accordance with Subsection (g)
15 ~~[of this section]~~ to the retail public utility of adequate and just
16 compensation for the property transferred and for the property
17 damaged as determined by the court or jury.

18 (g-1) The utility commission shall adopt rules governing
19 the evaluation of the factors to be considered in determining the
20 monetary compensation under Subsection (g). The utility commission
21 by rule shall adopt procedures to ensure that the total
22 compensation to be paid to a retail public utility under Subsection
23 (g) is determined not later than the 90th calendar day after the
24 date on which the utility commission determines that the
25 municipality's application is administratively complete.

26 (k) The following conditions apply when a municipality or
27 franchised utility makes an application to acquire the service area

1 or facilities of a retail public utility described in Subsection
2 (j)(2):

3 (1) the utility commission or court must determine
4 that the service provided by the retail public utility is
5 substandard or its rates are unreasonable in view of the reasonable
6 expenses of the utility;

7 (2) if the municipality abandons its application, the
8 court or the utility commission is authorized to award to the retail
9 public utility its reasonable expenses related to the proceeding
10 hereunder, including attorney fees; and

11 (3) unless otherwise agreed by the retail public
12 utility, the municipality must take the entire utility property of
13 the retail public utility in a proceeding hereunder.

14 (1) For an area incorporated by a municipality, the
15 compensation provided under Subsection (g) shall be determined by a
16 qualified individual or firm to serve as independent appraiser, who
17 shall be selected by the affected retail public utility, and the
18 costs of the appraiser shall be paid by the municipality. For an
19 area annexed by a municipality, the compensation provided under
20 Subsection (g) shall be determined by a qualified individual or
21 firm to which the municipality and the retail public utility agree
22 to serve as independent appraiser. If the retail public utility and
23 the municipality are unable to agree on a single individual or firm
24 to serve as the independent appraiser before the 11th day after the
25 date the retail public utility or municipality notifies the other
26 party of the impasse, the retail public utility and municipality
27 each shall appoint a qualified individual or firm to serve as

1 independent appraiser. On or before the 10th business day after the
 2 date of their appointment, the independent appraisers shall meet to
 3 reach an agreed determination of the amount of compensation. If the
 4 appraisers are unable to agree on a determination before the 16th
 5 business day after the date of their first meeting under this
 6 subsection, the retail public utility or municipality may petition
 7 the utility commission or a person the utility commission
 8 designates for the purpose to appoint a third qualified independent
 9 appraiser to reconcile the appraisals of the two originally
 10 appointed appraisers. The determination of the third appraiser may
 11 not be less than the lesser or more than the greater of the two
 12 original appraisals. The costs of the independent appraisers for
 13 an annexed area shall be shared equally by the retail public utility
 14 and the municipality. The determination of compensation under this
 15 subsection is binding on the utility commission.

16 (m) The utility commission shall deny an application for
 17 single certification by a municipality that fails to demonstrate
 18 compliance with the commission's minimum requirements for public
 19 drinking water systems.

20 SECTION 2.57. Section 13.2551, Water Code, is amended to
 21 read as follows:

22 Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a
 23 condition to decertification or single certification under Section
 24 13.254 or 13.255, and on request by an affected retail public
 25 utility, the utility commission may order:

26 (1) the retail public utility seeking to provide
 27 service to a decertified area to serve the entire service area of

1 the retail public utility that is being decertified; and

2 (2) the transfer of the entire certificate of public
3 convenience and necessity of a partially decertified retail public
4 utility to the retail public utility seeking to provide service to
5 the decertified area.

6 (b) The utility commission shall order service to the entire
7 area under Subsection (a) if the utility commission finds that the
8 decertified retail public utility will be unable to provide
9 continuous and adequate service at an affordable cost to the
10 remaining customers.

11 (c) The utility commission shall require the retail public
12 utility seeking to provide service to the decertified area to
13 provide continuous and adequate service to the remaining customers
14 at a cost comparable to the cost of that service to its other
15 customers and shall establish the terms under which the service
16 must be provided. The terms may include:

17 (1) transferring debt and other contract obligations;
18 (2) transferring real and personal property;
19 (3) establishing interim service rates for affected
20 customers during specified times; and

21 (4) other provisions necessary for the just and
22 reasonable allocation of assets and liabilities.

23 (d) The retail public utility seeking decertification shall
24 not charge the affected customers any transfer fee or other fee to
25 obtain service other than the retail public utility's usual and
26 customary rates for monthly service or the interim rates set by the
27 utility commission, if applicable.

1 (e) The utility commission shall not order compensation to
2 the decertificated retail utility if service to the entire service
3 area is ordered under this section.

4 SECTION 2.58. Sections 13.257(e), (i), (r), and (s), Water
5 Code, are amended to read as follows:

6 (e) The notice must be given to the prospective purchaser
7 before the execution of a binding contract of purchase and sale.
8 The notice may be given separately or as an addendum to or paragraph
9 of the contract. If the seller fails to provide the notice required
10 by this section, the purchaser may terminate the contract. If the
11 seller provides the notice at or before the closing of the purchase
12 and sale contract and the purchaser elects to close even though the
13 notice was not timely provided before the execution of the
14 contract, it is conclusively presumed that the purchaser has waived
15 all rights to terminate the contract and recover damages or pursue
16 other remedies or rights under this section. Notwithstanding any
17 provision of this section to the contrary, a seller, title
18 insurance company, real estate broker, or examining attorney, or an
19 agent, representative, or person acting on behalf of the seller,
20 company, broker, or attorney, is not liable for damages under
21 Subsection (m) or (n) or liable for any other damages to any person
22 for:

23 (1) failing to provide the notice required by this
24 section to a purchaser before the execution of a binding contract of
25 purchase and sale or at or before the closing of the purchase and
26 sale contract if:

27 (A) the utility service provider did not file the

1 map of the certificated service area in the real property records of
2 the county in which the service area is located and with the utility
3 commission depicting the boundaries of the service area of the
4 utility service provider as shown in the real property records of
5 the county in which the service area is located; and

6 (B) the utility commission did not maintain an
7 accurate map of the certificated service area of the utility
8 service provider as required by this chapter; or

9 (2) unintentionally providing a notice required by
10 this section that is incorrect under the circumstances before the
11 execution of a binding contract of purchase and sale or at or before
12 the closing of the purchase and sale contract.

13 (i) If the notice is given at closing as provided by
14 Subsection (g), a purchaser, or the purchaser's heirs, successors,
15 or assigns, may not maintain an action for damages or maintain an
16 action against a seller, title insurance company, real estate
17 broker, or lienholder, or any agent, representative, or person
18 acting on behalf of the seller, company, broker, or lienholder, by
19 reason of the seller's use of the information filed with the utility
20 commission by the utility service provider or the seller's use of
21 the map of the certificated service area of the utility service
22 provider filed in the real property records to determine whether
23 the property to be purchased is within the certificated service
24 area of the utility service provider. An action may not be
25 maintained against a title insurance company for the failure to
26 disclose that the described real property is included within the
27 certificated service area of a utility service provider if the

1 utility service provider did not file in the real property records
2 or with the utility commission the map of the certificated service
3 area.

4 (r) A utility service provider shall:

5 (1) record in the real property records of each county
6 in which the service area or a portion of the service area is
7 located a certified copy of the map of the certificate of public
8 convenience and necessity and of any amendment to the certificate
9 as contained in the utility commission's records, and a boundary
10 description of the service area by:

11 (A) a metes and bounds survey certified by a
12 licensed state land surveyor or a registered professional land
13 surveyor;

14 (B) the Texas State Plane Coordinate System;

15 (C) verifiable landmarks, including a road,
16 creek, or railroad line; or

17 (D) if a recorded plat of the area exists, lot and
18 block number; and

19 (2) submit to the utility commission [~~executive~~
20 ~~director~~] evidence of the recording.

21 (s) Each county shall accept and file in its real property
22 records a utility service provider's map presented to the county
23 clerk under this section if the map meets filing requirements, does
24 not exceed 11 inches by 17 inches in size, and is accompanied by the
25 appropriate fee. The recording required by this section must be
26 completed not later than the 31st day after the date a utility
27 service provider receives a final order from the utility commission

1 granting an application for a new certificate or for an amendment to
2 a certificate that results in a change in the utility service
3 provider's service area.

4 SECTION 2.59. Sections 13.301(a), (b), (c), (d), (e), (f),
5 and (g), Water Code, are amended to read as follows:

6 (a) A utility or a water supply or sewer service
7 corporation, on or before the 120th day before the effective date of
8 a sale, acquisition, lease, or rental of a water or sewer system
9 that is required by law to possess a certificate of public
10 convenience and necessity or the effective date of a merger or
11 consolidation with such a utility or water supply or sewer service
12 corporation, shall:

13 (1) file a written application with the utility
14 commission; and

15 (2) unless public notice is waived by the utility
16 commission [~~executive director~~] for good cause shown, give public
17 notice of the action.

18 (b) The utility commission may require that the person
19 purchasing or acquiring the water or sewer system demonstrate
20 adequate financial, managerial, and technical capability for
21 providing continuous and adequate service to the requested area and
22 any areas currently certificated to the person.

23 (c) If the person purchasing or acquiring the water or sewer
24 system cannot demonstrate adequate financial capability, the
25 utility commission may require that the person provide a bond or
26 other financial assurance in a form and amount specified by the
27 utility commission to ensure continuous and adequate utility

1 service is provided.

2 (d) The utility commission shall, with or without a public
3 hearing, investigate the sale, acquisition, lease, or rental to
4 determine whether the transaction will serve the public interest.

5 (e) Before the expiration of the 120-day notification
6 period, the utility commission ~~[executive director]~~ shall notify
7 all known parties to the transaction and the Office of Public
8 Utility Counsel whether ~~[of]~~ the utility commission will ~~[executive~~
9 ~~director's decision whether to request that the commission]~~ hold a
10 public hearing to determine if the transaction will serve the
11 public interest. The utility commission may hold ~~[executive~~
12 ~~director may request]~~ a hearing if:

13 (1) the application filed with the utility commission
14 or the public notice was improper;

15 (2) the person purchasing or acquiring the water or
16 sewer system has not demonstrated adequate financial, managerial,
17 and technical capability for providing continuous and adequate
18 service to the service area being acquired and to any areas
19 currently certificated to the person;

20 (3) the person or an affiliated interest of the person
21 purchasing or acquiring the water or sewer system has a history of:

22 (A) noncompliance with the requirements of the
23 utility commission, the commission, or the ~~[Texas]~~ Department of
24 State Health Services; or

25 (B) continuing mismanagement or misuse of
26 revenues as a utility service provider;

27 (4) the person purchasing or acquiring the water or

1 sewer system cannot demonstrate the financial ability to provide
2 the necessary capital investment to ensure the provision of
3 continuous and adequate service to the customers of the water or
4 sewer system; or

5 (5) there are concerns that the transaction may not
6 serve the public interest, after the application of the
7 considerations provided by Section 13.246(c) for determining
8 whether to grant a certificate of convenience and necessity.

9 (f) Unless the utility commission holds ~~[executive director~~
10 ~~requests that]~~ a public hearing ~~[be held]~~, the sale, acquisition,
11 lease, or rental may be completed as proposed:

12 (1) at the end of the 120-day period; or

13 (2) at any time after the utility commission
14 ~~[executive director]~~ notifies the utility or water supply or sewer
15 service corporation that a hearing will not be held ~~[requested]~~.

16 (g) If the utility commission decides to hold a hearing ~~[is~~
17 ~~requested]~~ or if the utility or water supply or sewer service
18 corporation fails to make the application as required or to provide
19 public notice, the sale, acquisition, lease, or rental may not be
20 completed unless the utility commission determines that the
21 proposed transaction serves the public interest.

22 SECTION 2.60. Section 13.302, Water Code, is amended to
23 read as follows:

24 Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC
25 UTILITY: REPORT. (a) A utility may not purchase voting stock in
26 another utility doing business in this state and a person may not
27 acquire a controlling interest in a utility doing business in this

1 state unless the person or utility files a written application with
2 the utility commission not later than the 61st day before the date
3 on which the transaction is to occur.

4 (b) The utility commission may require that a person
5 acquiring a controlling interest in a utility demonstrate adequate
6 financial, managerial, and technical capability for providing
7 continuous and adequate service to the requested area and any areas
8 currently certificated to the person.

9 (c) If the person acquiring a controlling interest cannot
10 demonstrate adequate financial capability, the utility commission
11 may require that the person provide a bond or other financial
12 assurance in a form and amount specified by the utility commission
13 to ensure continuous and adequate utility service is provided.

14 (d) The utility commission ~~[executive director]~~ may
15 ~~[request that the commission]~~ hold a public hearing on the
16 transaction if the utility commission ~~[executive director]~~
17 believes that a criterion prescribed by Section 13.301(e) applies.

18 (e) Unless the utility commission holds ~~[executive director~~
19 ~~requests that]~~ a public hearing ~~[be held]~~, the purchase or
20 acquisition may be completed as proposed:

21 (1) at the end of the 60-day period; or

22 (2) at any time after the utility commission
23 ~~[executive director]~~ notifies the person or utility that a hearing
24 will not be held ~~[requested]~~.

25 (f) If the utility commission decides to hold a hearing ~~[is~~
26 ~~requested]~~ or if the person or utility fails to make the application
27 to the utility commission as required, the purchase or acquisition

1 may not be completed unless the utility commission determines that
2 the proposed transaction serves the public interest. A purchase or
3 acquisition that is not completed in accordance with the provisions
4 of this section is void.

5 SECTION 2.61. Section 13.303, Water Code, is amended to
6 read as follows:

7 Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may
8 not loan money, stocks, bonds, notes, or other evidences of
9 indebtedness to any corporation or person owning or holding
10 directly or indirectly any stock of the utility unless the utility
11 reports the transaction to the utility commission within 60 days
12 after the date of the transaction.

13 SECTION 2.62. Section 13.304, Water Code, is amended to
14 read as follows:

15 Sec. 13.304. FORECLOSURE REPORT. (a) A utility that
16 receives notice that all or a portion of the utility's facilities or
17 property used to provide utility service are being posted for
18 foreclosure shall notify the utility commission and the commission
19 in writing of that fact not later than the 10th day after the date on
20 which the utility receives the notice.

21 (b) A financial institution that forecloses on a utility or
22 on any part of the utility's facilities or property that are used to
23 provide utility service is not required to provide the 120-day
24 notice prescribed by Section 13.301, but shall provide written
25 notice to the utility commission and the commission before the 30th
26 day preceding the date on which the foreclosure is completed.

27 (c) The financial institution may operate the utility for an

1 interim period prescribed by utility commission rule before
2 transferring or otherwise obtaining a certificate of convenience
3 and necessity. A financial institution that operates a utility
4 during an interim period under this subsection is subject to each
5 utility commission rule to which the utility was subject and in the
6 same manner.

7 SECTION 2.63. Section 13.341, Water Code, is amended to
8 read as follows:

9 Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The
10 utility commission has jurisdiction over affiliated interests
11 having transactions with utilities under the jurisdiction of the
12 utility commission to the extent of access to all accounts and
13 records of those affiliated interests relating to such
14 transactions, including but in no way limited to accounts and
15 records of joint or general expenses, any portion of which may be
16 applicable to those transactions.

17 SECTION 2.64. Section 13.342, Water Code, is amended to
18 read as follows:

19 Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING
20 SECURITIES. The utility commission may require the disclosure of
21 the identity and respective interests of every owner of any
22 substantial interest in the voting securities of any utility or its
23 affiliated interest. One percent or more is a substantial interest
24 within the meaning of this section.

25 SECTION 2.65. Section 13.343(a), Water Code, is amended to
26 read as follows:

27 (a) The owner of a utility that supplies retail water

1 service may not contract to purchase from an affiliated supplier
2 wholesale water service for any of that owner's systems unless:

3 (1) the wholesale service is provided for not more
4 than 90 days to remedy an emergency condition, as defined by utility
5 commission or commission rule; or

6 (2) the utility commission [~~executive director~~]
7 determines that the utility cannot obtain wholesale water service
8 from another source at a lower cost than from the affiliate.

9 SECTION 2.66. Section 13.381, Water Code, is amended to
10 read as follows:

11 Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party
12 to a proceeding before the utility commission or the commission is
13 entitled to judicial review under the substantial evidence rule.

14 SECTION 2.67. Section 13.382(a), Water Code, is amended to
15 read as follows:

16 (a) Any party represented by counsel who alleges that
17 existing rates are excessive or that rates prescribed by the
18 utility commission are excessive and who is a prevailing party in
19 proceedings for review of a utility commission order or decision
20 may in the same action recover against the regulation fund
21 reasonable fees for attorneys and expert witnesses and other costs
22 incurred by him before the utility commission and the court. The
23 amount of the attorney's fees shall be fixed by the court.

24 SECTION 2.68. Section 13.411, Water Code, is amended to
25 read as follows:

26 Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a)
27 If the utility commission or the commission has reason to believe

1 that any retail public utility or any other person or corporation is
2 engaged in or is about to engage in any act in violation of this
3 chapter or of any order or rule of the utility commission or the
4 commission entered or adopted under this chapter or that any retail
5 public utility or any other person or corporation is failing to
6 comply with this chapter or with any rule or order, the attorney
7 general on request of the utility commission or the commission, in
8 addition to any other remedies provided in this chapter, shall
9 bring an action in a court of competent jurisdiction in the name of
10 and on behalf of the utility commission or the commission against
11 the retail public utility or other person or corporation to enjoin
12 the commencement or continuation of any act or to require
13 compliance with this chapter or the rule or order.

14 (b) If the utility commission or the executive director of
15 the commission has reason to believe that the failure of the owner
16 or operator of a water utility to properly operate, maintain, or
17 provide adequate facilities presents an imminent threat to human
18 health or safety, the utility commission or the executive director
19 shall immediately:

20 (1) notify the utility's representative; and

21 (2) initiate enforcement action consistent with:

22 (A) this subchapter; and

23 (B) procedural rules adopted by the utility
24 commission or the commission.

25 SECTION 2.69. Section 13.4115, Water Code, is amended to
26 read as follows:

27 Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER

1 CHARGE; PENALTY. In regard to a customer complaint arising out of a
2 charge made by a public utility, if the utility commission [~~the~~
3 ~~executive director~~] finds that the utility has failed to make the
4 proper adjustment to the customer's bill after the conclusion of
5 the complaint process established by the utility commission, the
6 utility commission may issue an order requiring the utility to make
7 the adjustment. Failure to comply with the order within 30 days of
8 receiving the order is a violation for which the utility commission
9 may impose an administrative penalty under Section 13.4151.

10 SECTION 2.70. Sections 13.412(a), (f), and (g), Water Code,
11 are amended to read as follows:

12 (a) At the request of the utility commission or the
13 commission, the attorney general shall bring suit for the
14 appointment of a receiver to collect the assets and carry on the
15 business of a water or sewer utility that:

16 (1) has abandoned operation of its facilities;

17 (2) informs the utility commission or the commission
18 that the owner is abandoning the system;

19 (3) violates a final order of the utility commission
20 or the commission; or

21 (4) allows any property owned or controlled by it to be
22 used in violation of a final order of the utility commission or the
23 commission.

24 (f) For purposes of this section and Section 13.4132,
25 abandonment may include but is not limited to:

26 (1) failure to pay a bill or obligation owed to a
27 retail public utility or to an electric or gas utility with the

1 result that the utility service provider has issued a notice of
2 discontinuance of necessary services;

3 (2) failure to provide appropriate water or wastewater
4 treatment so that a potential health hazard results;

5 (3) failure to adequately maintain facilities,
6 resulting in potential health hazards, extended outages, or
7 repeated service interruptions;

8 (4) failure to provide customers adequate notice of a
9 health hazard or potential health hazard;

10 (5) failure to secure an alternative available water
11 supply during an outage;

12 (6) displaying a pattern of hostility toward or
13 repeatedly failing to respond to the utility commission or the
14 commission or the utility's customers; and

15 (7) failure to provide the utility commission or the
16 commission with adequate information on how to contact the utility
17 for normal business and emergency purposes.

18 (g) Notwithstanding Section 64.021, Civil Practice and
19 Remedies Code, a receiver appointed under this section may seek
20 ~~[commission]~~ approval from the utility commission and the
21 commission to acquire the water or sewer utility's facilities and
22 transfer the utility's certificate of convenience and necessity.
23 The receiver must apply in accordance with Subchapter H.

24 SECTION 2.71. Section 13.413, Water Code, is amended to
25 read as follows:

26 Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The
27 receiver may, subject to the approval of the court and after giving

1 notice to all interested parties, sell or otherwise dispose of all
2 or part of the real or personal property of a water or sewer utility
3 against which a proceeding has been brought under this subchapter
4 to pay the costs incurred in the operation of the receivership. The
5 costs include:

- 6 (1) payment of fees to the receiver for his services;
- 7 (2) payment of fees to attorneys, accountants,
8 engineers, or any other person or entity that provides goods or
9 services necessary to the operation of the receivership; and
- 10 (3) payment of costs incurred in ensuring that any
11 property owned or controlled by a water or sewer utility is not used
12 in violation of a final order of the utility commission or the
13 commission.

14 SECTION 2.72. Section 13.4131, Water Code, is amended to
15 read as follows:

16 Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The
17 utility commission, after providing to the utility notice and an
18 opportunity for a hearing, may place a utility under supervision
19 for gross or continuing mismanagement, gross or continuing
20 noncompliance with this chapter or a rule adopted under this
21 chapter [~~commission rules~~], or noncompliance with an order issued
22 under this chapter [~~commission orders~~].

23 (b) While supervising a utility, the utility commission may
24 require the utility to abide by conditions and requirements
25 prescribed by the utility commission, including:

- 26 (1) management requirements;
- 27 (2) additional reporting requirements;

1 (3) restrictions on hiring, salary or benefit
2 increases, capital investment, borrowing, stock issuance or
3 dividend declarations, and liquidation of assets; and

4 (4) a requirement that the utility place the utility's
5 funds into an account in a financial institution approved by the
6 utility commission and use of those funds shall be restricted to
7 reasonable and necessary utility expenses.

8 (c) While supervising a utility, the utility commission may
9 require that the utility obtain [~~commission~~] approval from the
10 utility commission before taking any action that may be restricted
11 under Subsection (b) [~~of this section~~]. Any action or transaction
12 which occurs without [~~commission~~] approval may be voided by the
13 utility commission.

14 SECTION 2.73. Sections 13.4132(a), (b), and (d), Water
15 Code, are amended to read as follows:

16 (a) The utility commission or the commission, after
17 providing to the utility notice and an opportunity to be heard by
18 the commissioners at a utility commission or commission meeting,
19 may authorize a willing person to temporarily manage and operate a
20 utility if the utility:

21 (1) has discontinued or abandoned operations or the
22 provision of services; or

23 (2) has been or is being referred to the attorney
24 general for the appointment of a receiver under Section 13.412.

25 (b) The utility commission or the commission may appoint a
26 person under this section by emergency order, and notice of the
27 action is adequate if the notice is mailed or hand-delivered to the

1 last known address of the utility's headquarters.

2 (d) This section does not affect the authority of the
3 utility commission or the commission to pursue an enforcement claim
4 against a utility or an affiliated interest.

5 SECTION 2.74. Sections 13.4133(a) and (c), Water Code, are
6 amended to read as follows:

7 (a) Notwithstanding the requirements of Subchapter F
8 [~~Section 13.187 of this code~~], the utility commission may authorize
9 an emergency rate increase for a utility for which a person has been
10 appointed under Section 13.4132 [~~of this code~~] or for which a
11 receiver has been appointed under Section 13.412 [~~of this code~~] if
12 the increase is necessary to ensure the provision of continuous and
13 adequate services to the utility's customers.

14 (c) The utility commission shall schedule a hearing to
15 establish a final rate within 15 months after the date on which an
16 emergency rate increase takes effect. The utility commission shall
17 require the utility to provide notice of the hearing to each
18 customer. The additional revenues collected under an emergency
19 rate increase are subject to refund if the utility commission finds
20 that the rate increase was larger than necessary to ensure
21 continuous and adequate service.

22 SECTION 2.75. Sections 13.414(a) and (c), Water Code, are
23 amended to read as follows:

24 (a) Any retail public utility or affiliated interest that
25 violates this chapter, fails to perform a duty imposed on it, or
26 fails, neglects, or refuses to obey an order, rule, direction, or
27 requirement of the utility commission or the commission or decree

or judgment of a court is subject to a civil penalty of not less than \$100 nor more than \$5,000 for each violation.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the utility commission or the commission in a court of competent jurisdiction to recover the penalty under this section.

SECTION 2.76. Sections 13.4151(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (m), Water Code, are amended to read as follows:

(a) If a person, affiliated interest, or entity subject to the jurisdiction of the utility commission or the commission violates this chapter or a rule or order adopted under this chapter, the utility commission or the commission, as applicable, may assess a penalty against that person, affiliated interest, or entity as provided by this section. The penalty may be in an amount not to exceed \$5,000 a day. Each day a violation continues may be considered a separate violation.

(b) In determining the amount of the penalty, the utility commission or the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated

1 and avoided;

2 (C) the demonstrated good faith, including
3 actions taken by the person, affiliated interest, or entity to
4 correct the cause of the violation;

5 (D) any economic benefit gained through the
6 violation; and

7 (E) the amount necessary to deter future
8 violations; and

9 (3) any other matters that justice requires.

10 (c) If, after examination of a possible violation and the
11 facts surrounding that possible violation, the utility commission
12 or the executive director of the commission concludes that a
13 violation has occurred, the utility commission or the executive
14 director may issue a preliminary report stating the facts on which
15 that conclusion is based, recommending that a penalty under this
16 section be imposed on the person, affiliated interest, or retail
17 public utility charged, and recommending the amount of that
18 proposed penalty. The utility commission or the executive director
19 shall base the recommended amount of the proposed penalty on the
20 factors provided by Subsection (b) [~~of this section~~], and shall
21 analyze each factor for the benefit of the appropriate agency
22 [~~commission~~].

23 (d) Not later than the 10th day after the date on which the
24 report is issued, the utility commission or the executive director
25 of the commission shall give written notice of the report to the
26 person, affiliated interest, or retail public utility charged with
27 the violation. The notice shall include a brief summary of the

1 charges, a statement of the amount of the penalty recommended, and a
2 statement of the right of the person, affiliated interest, or
3 retail public utility charged to a hearing on the occurrence of the
4 violation, the amount of the penalty, or both.

5 (e) Not later than the 20th day after the date on which
6 notice is received, the person, affiliated interest, or retail
7 public utility charged may give the appropriate agency [~~commission~~]
8 written consent to the [~~executive director's~~] report described by
9 Subsection (c), including the recommended penalty, or may make a
10 written request for a hearing.

11 (f) If the person, affiliated interest, or retail public
12 utility charged with the violation consents to the penalty
13 recommended in the report described by Subsection (c) [~~by the~~
14 ~~executive director~~] or fails to timely respond to the notice, the
15 utility commission or the commission by order shall assess that
16 penalty or order a hearing to be held on the findings and
17 recommendations in the [~~executive director's~~] report. If the
18 utility commission or the commission assesses the penalty
19 recommended by the report, the utility commission or the commission
20 shall give written notice to the person, affiliated interest, or
21 retail public utility charged of its decision.

22 (g) If the person, affiliated interest, or retail public
23 utility charged requests or the utility commission or the
24 commission orders a hearing, the appropriate agency [~~commission~~]
25 shall call a hearing and give notice of the hearing. As a result of
26 the hearing, the appropriate agency [~~commission~~] by order may find
27 that a violation has occurred and may assess a civil penalty, may

find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the appropriate agency ~~[commission]~~ shall analyze each of the factors provided by Subsection (b) ~~[of this section]~~.

(h) The utility commission or the commission shall give notice of its decision to the person, affiliated interest, or retail public utility charged, and if the appropriate agency ~~[commission]~~ finds that a violation has occurred and has assessed a penalty, that agency ~~[the commission]~~ shall give written notice to the person, affiliated interest, or retail public utility charged of its findings, of the amount of the penalty, and of the person's, affiliated interest's, or retail public utility's right to judicial review of the agency's ~~[commission's]~~ order. If the utility commission or the commission is required to give notice of a penalty under this subsection or Subsection (f) ~~[of this section]~~, the appropriate agency ~~[commission]~~ shall file notice of that agency's ~~[its]~~ decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(i) Within the 30-day period immediately following the day on which the utility commission's or commission's order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person, affiliated interest, or retail public utility charged with the penalty shall:

- (1) pay the penalty in full; or
- (2) if the person, affiliated interest, or retail

1 public utility seeks judicial review of the fact of the violation,
2 the amount of the penalty, or both:

3 (A) forward the amount of the penalty to the
4 appropriate agency ~~[commission]~~ for placement in an escrow account;
5 or

6 (B) post with the appropriate agency
7 ~~[commission]~~ a supersedeas bond in a form approved by the agency
8 ~~[commission]~~ for the amount of the penalty to be effective until all
9 judicial review of the order or decision is final.

10 (j) Failure to forward the money to or to post the bond with
11 the utility commission or the commission within the time provided
12 by Subsection (i) ~~[of this section]~~ constitutes a waiver of all
13 legal rights to judicial review. If the person, affiliated
14 interest, or retail public utility charged fails to forward the
15 money or post the bond as provided by Subsection (i) ~~[of this~~
16 ~~section]~~, the appropriate agency ~~[commission]~~ or the executive
17 director of that agency may forward the matter to the attorney
18 general for enforcement.

19 (k) Judicial review of the order or decision of the utility
20 commission or the commission assessing the penalty shall be under
21 the substantial evidence rule and may be instituted by filing a
22 petition with a district court in Travis County, as provided by
23 Subchapter G, Chapter 2001, Government Code.

24 (m) Notwithstanding any other provision of law, the utility
25 commission or the commission may compromise, modify, extend the
26 time for payment of, or remit, with or without condition, any
27 penalty imposed under this section.

SECTION 2.77. Section 13.417, Water Code, is amended to read as follows:

Sec. 13.417. CONTEMPT PROCEEDINGS. If any person or retail public utility fails to comply with any lawful order of the utility commission ~~or the commission~~ or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the utility commission ~~or the commission~~ may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

SECTION 2.78. Section 13.418, Water Code, is amended to read as follows:

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER UTILITY IMPROVEMENT ACCOUNT. (a) Fines and penalties collected under this chapter from a retail public utility that is not a public utility in other than criminal proceedings shall be ~~[paid to the commission and]~~ deposited in the general revenue fund.

(b) Fines and penalties collected from a public utility under this chapter in other than criminal proceedings shall be ~~[paid to the commission and]~~ deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 2.79. Section 13.501(7), Water Code, is amended to read as follows:

(7) "Multiple use facility" means commercial or industrial parks, office complexes, marinas, and others specifically identified in utility commission rules with five or more units.

SECTION 2.80. Section 13.502(e), Water Code, is amended to read as follows:

(e) An owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may not change from submetered billing to allocated billing unless:

(1) the utility commission [~~executive director~~] approves of the change in writing after a demonstration of good cause, including meter reading or billing problems that could not feasibly be corrected or equipment failures; and

(2) the property owner meets rental agreement requirements established by the utility commission.

SECTION 2.81. Sections 13.503(a), (b), and (e), Water Code, are amended to read as follows:

(a) The utility commission shall encourage submetering of individual rental or dwelling units by master meter operators or building owners to enhance the conservation of water resources.

(b) Notwithstanding any other law, the utility commission shall adopt rules and standards under which an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility that is not individually metered for water for each rental or dwelling unit may install submetering equipment for each individual rental or dwelling unit for the purpose of fairly allocating the cost of each individual rental or dwelling unit's water consumption, including wastewater charges based on water consumption. In addition to other appropriate safeguards for the tenant, the rules shall require that, except as provided by this section, an apartment house owner, manufactured home rental

1 community owner, multiple use facility owner, or condominium
 2 manager may not impose on the tenant any extra charges, over and
 3 above the cost per gallon and any other applicable taxes and
 4 surcharges that are charged by the retail public utility to the
 5 owner or manager, and that the rental unit or apartment house owner
 6 or manager shall maintain adequate records regarding submetering
 7 and make the records available for inspection by the tenant during
 8 reasonable business hours. The rules shall allow an owner or
 9 manager to charge a tenant a fee for late payment of a submetered
 10 water bill if the amount of the fee does not exceed five percent of
 11 the bill paid late. All submetering equipment is subject to the
 12 rules and standards established by the utility commission for
 13 accuracy, testing, and record keeping of meters installed by
 14 utilities and to the meter-testing requirements of Section 13.140
 15 [~~of this code~~].

16 (e) The utility commission may authorize a building owner to
 17 use submetering equipment that relies on integrated radio based
 18 meter reading systems and remote registration in a building
 19 plumbing system using submeters that comply with nationally
 20 recognized plumbing standards and are as accurate as utility water
 21 meters in single application conditions.

22 SECTION 2.82. Section 13.5031, Water Code, is amended to
 23 read as follows:

24 Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any
 25 other law, the utility commission shall adopt rules and standards
 26 governing billing systems or methods used by manufactured home
 27 rental community owners, apartment house owners, condominium

1 managers, or owners of other multiple use facilities for prorating
2 or allocating among tenants nonsubmetered master metered utility
3 service costs. In addition to other appropriate safeguards for the
4 tenant, those rules shall require that:

5 (1) the rental agreement contain a clear written
6 description of the method of calculation of the allocation of
7 nonsubmetered master metered utilities for the manufactured home
8 rental community, apartment house, or multiple use facility;

9 (2) the rental agreement contain a statement of the
10 average manufactured home, apartment, or multiple use facility unit
11 monthly bill for all units for any allocation of those utilities for
12 the previous calendar year;

13 (3) except as provided by this section, an owner or
14 condominium manager may not impose additional charges on a tenant
15 in excess of the actual charges imposed on the owner or condominium
16 manager for utility consumption by the manufactured home rental
17 community, apartment house, or multiple use facility;

18 (4) the owner or condominium manager shall maintain
19 adequate records regarding the utility consumption of the
20 manufactured home rental community, apartment house, or multiple
21 use facility, the charges assessed by the retail public utility,
22 and the allocation of the utility costs to the tenants;

23 (5) the owner or condominium manager shall maintain
24 all necessary records concerning utility allocations, including
25 the retail public utility's bills, and shall make the records
26 available for inspection by the tenants during normal business
27 hours; and

1 (6) the owner or condominium manager may charge a
2 tenant a fee for late payment of an allocated water bill if the
3 amount of the fee does not exceed five percent of the bill paid
4 late.

5 SECTION 2.83. Section 13.505, Water Code, is amended to
6 read as follows:

7 Sec. 13.505. ENFORCEMENT. In addition to the enforcement
8 provisions contained in Subchapter K [~~of this chapter~~], if an
9 apartment house owner, condominium manager, manufactured home
10 rental community owner, or other multiple use facility owner
11 violates a rule of the utility commission regarding submetering of
12 utility service consumed exclusively within the tenant's dwelling
13 unit or multiple use facility unit or nonsubmetered master metered
14 utility costs, the tenant may recover three times the amount of any
15 overcharge, a civil penalty equal to one month's rent, reasonable
16 attorney's fees, and court costs from the owner or condominium
17 manager. However, an owner of an apartment house, manufactured
18 home rental community, or other multiple use facility or
19 condominium manager is not liable for a civil penalty if the owner
20 or condominium manager proves the violation was a good faith,
21 unintentional mistake.

22 SECTION 2.84. Section 13.512, Water Code, is amended to
23 read as follows:

24 Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION
25 CONTRACTS. Any eligible city is authorized to enter into
26 privatization contracts if such action is recommended by the board
27 of utility trustees and authorized by the governing body of the

1 eligible city pursuant to an ordinance. Any privatization contract
2 entered into prior to the effective date of this Act is validated,
3 ratified, and approved. Each eligible city shall file a copy of its
4 privatization contract with the utility commission, for
5 information purposes only, within 60 days of execution or the
6 effective date of this Act, whichever is later.

7 SECTION 2.85. Section 13.513, Water Code, is amended to
8 read as follows:

9 Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE
10 PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider
11 shall not constitute a "water and sewer utility," a "public
12 utility," a "utility," or a "retail public utility" within the
13 meaning of this chapter [~~Chapter 13~~] as a result of entering into or
14 performing a privatization contract, if the governing body of the
15 eligible city shall so elect by ordinance and provide notice
16 thereof in writing to the utility commission; provided, however,
17 this provision shall not affect the application of this chapter
18 [~~Chapter 13~~] to an eligible city itself. Notwithstanding anything
19 contained in this section, any service provider who seeks to extend
20 or render sewer service to any person or municipality other than, or
21 in addition to, an eligible city may be a "public utility" for the
22 purposes of this chapter [~~Chapter 13~~] with respect to such other
23 person or municipality.

24 SECTION 2.86. Section 49.352(c), Water Code, is amended to
25 read as follows:

26 (c) For purposes of this section, a municipality may obtain
27 single certification in the manner provided by Section 13.255,

1 except that the municipality may file an application with the
2 Public Utility Commission of Texas ~~[commission]~~ to grant single
3 certification immediately after the municipality provides notice
4 of intent to provide service as required by Section 13.255(b).

5 SECTION 2.87. Section 552.047(e), Local Government Code, is
6 amended to read as follows:

7 (e) Users residing within the established service area, but
8 outside the municipality's boundaries, may appeal rates
9 established for drainage charges under ~~[to the Texas Natural~~
10 ~~Resource Conservation Commission as authorized by]~~ Section
11 13.043(b), [of the] Water Code.

12 SECTION 2.88. Section 7201.004(b), Special District Local
13 Laws Code, is amended to read as follows:

14 (b) This section does not apply to:

15 (1) rules or regulations concerning potable water
16 quality standards; or

17 (2) conflicts relating to service areas or
18 certificates issued to the corporation or district by the Public
19 Utility Commission of Texas or the Texas Commission on
20 Environmental Quality.

21 SECTION 2.89. Section 7201.005(c), Special District Local
22 Laws Code, is amended to read as follows:

23 (c) District boundaries may be modified in accordance with
24 Chapters 13 and 49, Water Code, except that the boundaries must
25 include all territory in any area included under a certificate of
26 convenience and necessity issued by the Public Utility Commission
27 of Texas or the Texas Commission on Environmental Quality to the

1 district.

2 SECTION 2.90. Section 7201.102, Special District Local Laws
3 Code, is amended to read as follows:

4 Sec. 7201.102. PROVISION OF SERVICE. The district shall at
5 all times operate and construct necessary improvements within the
6 certificated areas established by the Public Utility Commission of
7 Texas or the Texas Commission on Environmental Quality [~~commission~~]
8 to provide uninterrupted, continuous, and adequate service to
9 existing and future customers for water, sewer, and contract
10 services.

11 SECTION 2.91. Section 8363.106(b), Special District Local
12 Laws Code, is amended to read as follows:

13 (b) In relation to a retail public utility that provides
14 water or sewer service to all or part of the area of the district
15 under a certificate of public convenience and necessity, the
16 district may exercise the powers given to a municipality provided
17 by Section 13.255, Water Code, as if the district were a
18 municipality that had annexed the area of the district. The Public
19 Utility Commission of Texas [~~commission~~] shall grant single
20 certification as to the city as provided by Section 13.255(c),
21 Water Code, in the event that the district applies for the
22 certification on the city's behalf in the manner provided by
23 Section 13.255(b), Water Code.

24 SECTION 2.92. Section 8363.251(a), Special District Local
25 Laws Code, is amended to read as follows:

26 (a) The city may dissolve the district by ordinance after
27 provision is made for all debts incurred by the district if one or

1 more of the following does not occur:

2 (1) on or before the 90th day after the effective date
3 of the Act enacting this chapter, the city receives one or more
4 petitions requesting annexation of all territory in the district
5 remaining in the extraterritorial jurisdiction of the city;

6 (2) on or before the last day of the ninth month after
7 the effective date of the Act enacting this chapter, the city adopts
8 one or more ordinances annexing all territory in the district
9 remaining in the city's extraterritorial jurisdiction;

10 (3) on or before the last day of the third year after
11 the effective date of the Act enacting this chapter, the Public
12 Utility Commission of Texas [~~commission~~] issues an order approving
13 the sale and transfer of a certificate of public convenience and
14 necessity authorizing the city to provide retail water service to
15 territory in the district; or

16 (4) by the end of the fifth year after the effective
17 date of the Act enacting this chapter, the district has completed
18 construction of internal streets and water and sanitary sewer
19 facilities sufficient to serve at least 100 residential lots in the
20 district.

21 SECTION 2.93. Section 8801.201, Special District Local Laws
22 Code, is amended to read as follows:

23 Sec. 8801.201. APPEAL OF SURFACE WATER RATES. (a) A
24 person who is required to convert to surface water under this
25 chapter and who purchases that water supply wholesale from a
26 political subdivision as defined by Section 12.013(b), Water Code,
27 may appeal to the Public Utility Commission of Texas [~~commission~~]

the rates the political subdivision charges to the person. Chapter 12, Water Code, and rules adopted under that chapter apply to an appeal under this section.

(b) The Public Utility Commission of Texas [~~commission~~] shall hear the appeal not later than the 180th day after the date the appeal is filed.

(c) The Public Utility Commission of Texas [~~commission~~] shall issue a final decision on the appeal not later than the 60th day after the date the hearing ends.

SECTION 2.94. Section 8803.151(1), Special District Local Laws Code, is amended to read as follows:

(1) "Commission" means the Public Utility Commission of Texas [~~Commission on Environmental Quality~~].

SECTION 2.95. Section 8808.151(1), Special District Local Laws Code, is amended to read as follows:

(1) "Commission" means the Public Utility Commission of Texas [~~Commission on Environmental Quality~~].

SECTION 2.96. (a) On September 1, 2014, the following are transferred from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas:

(1) the powers, duties, functions, programs, and activities of the Texas Commission on Environmental Quality relating to the economic regulation of water and sewer service, including the issuance and transfer of certificates of convenience and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters, under Section 12.013 and Chapter 13, Water Code, as provided by this Act;

1 (2) any obligations and contracts of the Texas
2 Commission on Environmental Quality that are directly related to
3 implementing a power, duty, function, program, or activity
4 transferred under this Act; and

5 (3) all property and records in the custody of the
6 Texas Commission on Environmental Quality that are related to a
7 power, duty, function, program, or activity transferred under this
8 Act and all funds appropriated by the legislature for that power,
9 duty, function, program, or activity.

10 (b) The Texas Commission on Environmental Quality shall
11 continue to carry out the commission's duties related to the
12 economic regulation of water and sewer service under the law as it
13 existed immediately before the effective date of this Act until
14 September 1, 2014, and the former law is continued in effect for
15 that purpose.

16 (c) The Texas Commission on Environmental Quality and the
17 Public Utility Commission of Texas shall enter into a memorandum of
18 understanding that:

19 (1) identifies in detail the applicable powers and
20 duties that are transferred by this Act;

21 (2) establishes a plan for the identification and
22 transfer of the records, personnel, property, and unspent
23 appropriations of the Texas Commission on Environmental Quality
24 that are used for purposes of the commission's powers and duties
25 directly related to the economic regulation of water and sewer
26 service under Section 12.013 and Chapter 13, Water Code, as amended
27 by this Act; and

1 (3) establishes a plan for the transfer of all pending
2 applications, hearings, rulemaking proceedings, and orders
3 relating to the economic regulation of water and sewer service
4 under Section 12.013 and Chapter 13, Water Code, as amended by this
5 Act, from the Texas Commission on Environmental Quality to the
6 Public Utility Commission of Texas.

7 (d) The memorandum of understanding under this section:

8 (1) is not required to be adopted by rule under Section
9 5.104, Water Code; and

10 (2) must be completed by August 1, 2014.

11 (e) The executive directors of the Texas Commission on
12 Environmental Quality and the Public Utility Commission of Texas
13 may agree in the memorandum of understanding under this section to
14 transfer to the Public Utility Commission of Texas any personnel of
15 the Texas Commission on Environmental Quality whose functions
16 predominantly involve powers, duties, obligations, functions, and
17 activities related to the economic regulation of water and sewer
18 service under Section 12.013 and Chapter 13, Water Code, as amended
19 by this Act.

20 (f) The Texas Commission on Environmental Quality and the
21 Public Utility Commission of Texas shall periodically update the
22 Office of Public Utility Counsel on the anticipated contents of the
23 memorandum of understanding under this section during the
24 development of the memorandum.

25 (g) On or after September 1, 2013, the Office of Public
26 Utility Counsel may initiate or intervene in a contested case
27 before the Texas Commission on Environmental Quality that the

1 office would be entitled to initiate or intervene in if the case
2 were before the Public Utility Commission of Texas, as authorized
3 by Chapter 13, Water Code, as amended by this Act.

4 (h) The Texas Commission on Environmental Quality and the
5 Public Utility Commission of Texas shall appoint a transition team
6 to accomplish the purposes of this section. The transition team may
7 consult with the Office of Public Utility Counsel to accomplish the
8 purposes of this section. The transition team shall establish
9 guidelines on how the two agencies will cooperate regarding:

- 10 (1) meeting federal drinking water standards;
11 (2) maintaining adequate supplies of water;
12 (3) meeting established design criteria for
13 wastewater treatment plants;
14 (4) demonstrating the economic feasibility of
15 regionalization; and
16 (5) serving the needs of economically distressed
17 areas.

18 (i) The transition team appointed under Subsection (h) of
19 this section shall provide monthly updates to the executive
20 directors of the Texas Commission on Environmental Quality and the
21 Public Utility Commission of Texas on the implementation of this
22 Act and provide a final report on the implementation to the
23 executive directors not later than September 1, 2014.

24 (j) A rule, form, policy, procedure, or decision of the
25 Texas Commission on Environmental Quality related to a power, duty,
26 function, program, or activity transferred under this Act continues
27 in effect as a rule, form, policy, procedure, or decision of the

1 Public Utility Commission of Texas and remains in effect until
2 amended or replaced by that agency. Notwithstanding any other law,
3 beginning September 1, 2013, the Public Utility Commission of Texas
4 may propose rules, forms, policies, and procedures related to a
5 function to be transferred to the Public Utility Commission of
6 Texas under this Act.

7 (k) The Public Utility Commission of Texas and the Texas
8 Commission on Environmental Quality shall adopt rules to implement
9 the changes in law made by this Act to Section 12.013 and Chapter
10 13, Water Code, not later than September 1, 2015.

11 (1) An affiliate of a Class A utility, as those terms are
12 defined by Section 13.002, Water Code, as amended by this Act, may
13 not file an application for a rate change on or after the effective
14 date of this Act unless the affiliated Class A utility has filed for
15 a rate change on or after that date. In relation to the application
16 filed by the affiliate of the Class A utility, the Public Utility
17 Commission of Texas:

18 (1) may not approve the rate change application until
19 the Public Utility Commission of Texas approves the rate change
20 application filed by the affiliated Class A utility; and

21 (2) may require the affiliate to comply with the Class
22 A utility rate change process prescribed by Section 13.187, Water
23 Code, regardless of whether the affiliate is classified as a Class
24 A, B, or C utility under Section 13.002, Water Code, as amended by
25 this Act.

26 SECTION 2.97. (a) The Public Utility Commission of Texas
27 shall conduct a comparative analysis of the ratemaking authority of

1 the commission before the effective date of this Act and the
2 ratemaking authority of the commission after the transition
3 described in Section 2.96 of this article, to identify potential
4 for procedural standardization. The Public Utility Commission of
5 Texas shall issue a report of the analysis, with recommendations
6 regarding rate standardization, for consideration by the 84th
7 Legislature.

8 (b) The Public Utility Commission of Texas shall prepare a
9 report describing staffing changes related to the transition
10 described in Section 2.96 of this article, including reductions in
11 staff that the commission may realize as a result of consolidated
12 functions. The Public Utility Commission of Texas shall submit the
13 report to the Legislative Budget Board and the governor with the
14 legislative appropriations request for the 2016-2017 biennium.

15 SECTION 2.98. The Office of Public Utility Counsel shall
16 prepare a report describing staffing changes related to the changes
17 in law made to the duties of the office in this article, including
18 reductions in staff that the office may realize as a result of
19 consolidated functions. The Office of Public Utility Counsel shall
20 submit the report to the Legislative Budget Board and the governor
21 with the legislative appropriations request for the 2016-2017
22 biennium.

23 ARTICLE 3. EFFECTIVE DATE

24 SECTION 3.01. This Act takes effect September 1, 2013.

H.B. No. 1600

President of the Senate

Speaker of the House

I certify that H.B. No. 1600 was passed by the House on March 21, 2013, by the following vote: Yeas 139, Nays 6, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1600 on April 25, 2013, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1600 on May 13, 2013, by the following vote: Yeas 141, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 1600

I certify that H.B. No. 1600 was passed by the Senate, with amendments, on April 23, 2013, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1600 on May 13, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to rates for water service, to the transfer of functions relating to the economic regulation of water and sewer service from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas, and to the duties of the Office of Public Utility Counsel regarding the economic regulation of water and sewer service.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 5.013, Water Code, is amended to read as follows:

(a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

(2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;

(3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

(4) the determination of the feasibility of certain federal projects;

(5) the adoption and enforcement of rules and performance of other acts relating to the safe construction,

1 maintenance, and removal of dams;

2 (6) conduct of the state's hazardous spill prevention
3 and control program;

4 (7) the administration of the state's program relating
5 to inactive hazardous substance, pollutant, and contaminant
6 disposal facilities;

7 (8) the administration of a portion of the state's
8 injection well program;

9 (9) the administration of the state's programs
10 involving underground water and water wells and drilled and mined
11 shafts;

12 (10) the state's responsibilities relating to regional
13 waste disposal;

14 (11) the responsibilities assigned to the commission
15 by Chapters 361, 363, 382, and 401, Health and Safety Code; and

16 (12) ~~[administration of the state's water rate program~~
17 ~~under Chapter 13 of this code, and~~

18 ~~[(13)]~~ any other areas assigned to the commission by
19 this code and other laws of this state.

20 SECTION 2. Subsection (a), Section 5.311, Water Code, is
21 amended to read as follows:

22 (a) The commission may delegate to an administrative law
23 judge of the State Office of Administrative Hearings the
24 responsibility to hear any matter before the commission ~~[and to~~
25 ~~issue interlocutory orders related to interim rates under Chapter~~
26 ~~13]~~.

27 SECTION 3. Section 5.507, Water Code, is amended to read as

1 follows:

2 Sec. 5.507. EMERGENCY ORDER FOR OPERATION OF UTILITY THAT
3 DISCONTINUES OPERATION OR IS REFERRED FOR APPOINTMENT OF RECEIVER.
4 The commission or the Public Utility Commission of Texas may issue
5 an emergency order appointing a willing person to temporarily
6 manage and operate a utility under Section 13.4132. Notice of the
7 action is adequate if the notice is mailed or hand delivered to the
8 last known address of the utility's headquarters.

9 SECTION 4. Subsections (a) and (c), Section 5.508, Water
10 Code, are amended to read as follows:

11 (a) Notwithstanding the requirements of Subchapter F,
12 Chapter 13 [~~Section 13.187~~], the Public Utility Commission of Texas
13 [~~commission~~] may authorize an emergency rate increase for a utility
14 for which a person has been appointed under Section 5.507 or 13.4132
15 [~~13.412~~] or for which a receiver has been appointed under Section
16 13.412 [~~13.4132~~] if the increase is necessary to ensure the
17 provision of continuous and adequate services to the utility's
18 customers. The Public Utility Commission of Texas shall consult
19 with the commission as needed to carry out this section.

20 (c) Notwithstanding Section 5.505, an order may be issued
21 under this section for a term not to exceed 15 months. The Public
22 Utility Commission of Texas [~~commission~~] shall schedule a hearing
23 to establish a final rate within 15 months after the date on which
24 an emergency rate increase takes effect. The additional revenues
25 collected under an emergency rate increase are subject to refund if
26 the utility commission finds that the rate increase was larger than
27 necessary to ensure continuous and adequate service.

SECTION 5. Section 11.002, Water Code, is amended by adding Subdivision (21) to read as follows:

(21) "Utility commission" means the Public Utility Commission of Texas.

SECTION 6. Subsection (f), Section 11.041, Water Code, is amended to read as follows:

(f) The commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. The utility commission may participate in the hearing if necessary to present evidence on the price or rental demanded for the available water. On completion of the hearing, the commission shall render a written decision.

SECTION 7. Section 12.013, Water Code, is amended to read as follows:

Sec. 12.013. RATE-FIXING POWER. (a) The utility commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12 of this code.

(b) In this section, ~~[The term]~~ "political subdivision" ~~[when used in this section]~~ means incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

(c) The utility commission in reviewing and fixing reasonable rates for furnishing water under this section may use any reasonable basis for fixing rates as may be determined by the utility commission to be appropriate under the circumstances of the

case being reviewed; provided, however, the utility commission may not fix a rate which a political subdivision may charge for furnishing water which is less than the amount required to meet the debt service and bond coverage requirements of that political subdivision's outstanding debt.

(d) The utility commission's jurisdiction under this section relating to incorporated cities, towns, or villages shall be limited to water furnished by such city, town, or village to another political subdivision on a wholesale basis.

(e) The utility commission may establish interim rates and compel continuing service during the pendency of any rate proceeding.

(f) The utility commission may order a refund or assess additional charges from the date a petition for rate review is received by the utility commission of the difference between the rate actually charged and the rate fixed by the utility commission, plus interest at the statutory rate.

~~[(g) No action or proceeding commenced prior to January 1, 1977, before the Texas Water Rights Commission shall be affected by the enactment of this section.]~~

~~[(h) Nothing herein contained shall affect the jurisdiction of the Public Utility Commission.]~~

SECTION 8. Section 13.002, Water Code, is amended by amending Subdivisions (2), (18), and (22) and adding Subdivisions (4-a), (4-b), (4-c), and (22-a) to read as follows:

(2) "Affiliated interest" or "affiliate" means:

(A) any person or corporation owning or holding

1 directly or indirectly five percent or more of the voting
2 securities of a utility;

3 (B) any person or corporation in any chain of
4 successive ownership of five percent or more of the voting
5 securities of a utility;

6 (C) any corporation five percent or more of the
7 voting securities of which is owned or controlled directly or
8 indirectly by a utility;

9 (D) any corporation five percent or more of the
10 voting securities of which is owned or controlled directly or
11 indirectly by any person or corporation that owns or controls
12 directly or indirectly five percent or more of the voting
13 securities of any utility or by any person or corporation in any
14 chain of successive ownership of five percent of those utility
15 securities;

16 (E) any person who is an officer or director of a
17 utility or of any corporation in any chain of successive ownership
18 of five percent or more of voting securities of a public utility;

19 (F) any person or corporation that the utility
20 commission, after notice and hearing, determines actually
21 exercises any substantial influence or control over the policies
22 and actions of a utility or over which a utility exercises such
23 control or that is under common control with a utility, such control
24 being the possession directly or indirectly of the power to direct
25 or cause the direction of the management and policies of another,
26 whether that power is established through ownership or voting of
27 securities or by any other direct or indirect means; or

1 (G) any person or corporation that the utility
2 commission, after notice and hearing, determines is exercising
3 substantial influence over the policies and actions of the utility
4 in conjunction with one or more persons or corporations with which
5 they are related by ownership or blood relationship, or by action in
6 concert, that together they are affiliated within the meaning of
7 this section, even though no one of them alone is so affiliated.

8 (4-a) "Class A utility" means a public utility that
9 provides retail water or sewer utility service through 10,000 or
10 more taps or connections.

11 (4-b) "Class B utility" means a public utility that
12 provides retail water or sewer utility service through 500 or more
13 taps or connections but fewer than 10,000 taps or connections.

14 (4-c) "Class C utility" means a public utility that
15 provides retail water or sewer utility service through fewer than
16 500 taps or connections.

17 (18) "Regulatory authority" means, in accordance with
18 the context in which it is found, ~~[either]~~ the commission, the
19 utility commission, or the governing body of a municipality.

20 (22) "Test year" means the most recent 12-month
21 period, beginning on the first day of a calendar or fiscal year
22 quarter, for which ~~[representative]~~ operating data for a retail
23 public utility are available. ~~[A utility rate filing must be based~~
24 ~~on a test year that ended less than 12 months before the date on~~
25 ~~which the utility made the rate filing.]~~

26 (22-a) "Utility commission" means the Public Utility
27 Commission of Texas.

SECTION 9. Section 13.004, Water Code, is amended to read as follows:

Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a) Notwithstanding any other law, the utility commission has the same jurisdiction over a water supply or sewer service corporation that the utility commission has under this chapter over a water and sewer utility if the utility commission finds that the water supply or sewer service corporation:

(1) is failing to conduct annual or special meetings in compliance with Section 67.007; or

(2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and (24).

(b) If the water supply or sewer service corporation voluntarily converts to a special utility district operating under Chapter 65, the utility commission's jurisdiction provided by this section ends.

SECTION 10. Section 13.011, Water Code, is amended to read as follows:

Sec. 13.011. EMPLOYEES. (a) The utility commission and the executive director of the commission, subject to approval, as applicable, by the utility commission or the commission, shall employ any engineering, accounting, and administrative personnel necessary to carry out each agency's powers and duties under this chapter.

1 (b) The executive director and the commission's staff are
2 responsible for the gathering of information relating to all
3 matters within the jurisdiction of the commission under this
4 subchapter. The utility commission and the utility commission's
5 staff are responsible for the gathering of information relating to
6 all matters within the jurisdiction of the utility commission under
7 this subchapter. The duties of the utility commission, the
8 executive director, and the staff of the utility commission or
9 commission, as appropriate, include:

10 (1) accumulation of evidence and other information
11 from water and sewer utilities, ~~and~~ from the utility commission
12 or commission, as appropriate, and the governing body of the
13 respective agency, [commission and the board] and from other
14 sources for the purposes specified by this chapter;

15 (2) preparation and presentation of evidence before
16 the utility commission or commission, as appropriate, [commission]
17 or its appointed examiner in proceedings;

18 (3) conducting investigations of water and sewer
19 utilities under the jurisdiction of the utility commission or
20 commission, as appropriate [commission];

21 (4) preparation of recommendations that the utility
22 commission or commission, as appropriate, [commission] undertake
23 an investigation of any matter within its jurisdiction;

24 (5) preparation of recommendations and a report for
25 inclusion in the annual report of the utility commission or
26 commission, as appropriate [commission];

27 (6) protection and representation of the public

interest~~[, together with the public interest advocate,]~~ before the
utility commission or commission, as appropriate ~~[commission]~~; and

(7) other activities that are reasonably necessary to
enable the utility commission and the executive director and the
staff of the utility commission or commission, as appropriate, to
perform their duties.

SECTION 11. Section 13.014, Water Code, is amended to read
as follows:

Sec. 13.014. ATTORNEY GENERAL TO REPRESENT COMMISSION OR
UTILITY COMMISSION. The attorney general shall represent the
commission or the utility commission under this chapter in all
matters before the state courts and any court of the United States.

SECTION 12. Subchapter B, Chapter 13, Water Code, is
amended by adding Section 13.017 to read as follows:

Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL; POWERS AND
DUTIES. (a) In this section, "counsellor" and "office" have the
meanings assigned by Section 11.003, Utilities Code.

(b) The independent Office of Public Utility Counsel
represents the interests of residential and small commercial
consumers under this chapter. The office:

(1) shall assess the effect of utility rate changes
and other regulatory actions on residential consumers in this
state;

(2) shall advocate in the office's own name a position
determined by the counsellor to be most advantageous to a
substantial number of residential consumers;

(3) may appear or intervene, as a party or otherwise,

1 as a matter of right on behalf of:

2 (A) residential consumers, as a class, in any
3 proceeding before the utility commission, including an alternative
4 dispute resolution proceeding; and

5 (B) small commercial consumers, as a class, in
6 any proceeding in which the counsellor determines that small
7 commercial consumers are in need of representation, including an
8 alternative dispute resolution proceeding;

9 (4) may initiate or intervene as a matter of right or
10 otherwise appear in a judicial proceeding:

11 (A) that involves an action taken by an
12 administrative agency in a proceeding, including an alternative
13 dispute resolution proceeding, in which the counsellor is
14 authorized to appear; or

15 (B) in which the counsellor determines that
16 residential consumers or small commercial consumers are in need of
17 representation;

18 (5) is entitled to the same access as a party, other
19 than utility commission staff, to records gathered by the utility
20 commission under Section 13.133;

21 (6) is entitled to discovery of any nonprivileged
22 matter that is relevant to the subject matter of a proceeding or
23 petition before the utility commission;

24 (7) may represent an individual residential or small
25 commercial consumer with respect to the consumer's disputed
26 complaint concerning retail utility services that is unresolved
27 before the utility commission;

1 (8) may recommend legislation to the legislature that
2 the office determines would positively affect the interests of
3 residential and small commercial consumers; and

4 (9) may conduct consumer outreach and education
5 programs for residential and small commercial consumers.

6 (c) This section does not:

7 (1) affect a duty the office is required to perform
8 under other law; or

9 (2) limit the authority of the utility commission to
10 represent residential or small commercial consumers.

11 (d) The appearance of the counsellor in a proceeding does
12 not preclude the appearance of other parties on behalf of
13 residential or small commercial consumers. The counsellor may not
14 be grouped with any other party.

15 SECTION 13. Section 13.041, Water Code, is amended to read
16 as follows:

17 Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND
18 COMMISSION ~~[POWER]~~; RULES; HEARINGS. (a) The utility commission
19 may regulate and supervise the business of each ~~[every]~~ water and
20 sewer utility within its jurisdiction, including ratemaking and
21 other economic regulation. The commission may regulate water and
22 sewer utilities within its jurisdiction to ensure safe drinking
23 water and environmental protection. The utility commission and the
24 commission ~~[and]~~ may do all things, whether specifically designated
25 in this chapter or implied in this chapter, necessary and
26 convenient to the exercise of these powers ~~[this power]~~ and
27 jurisdiction. The utility commission may consult with the

1 commission as necessary in carrying out its duties related to the
2 regulation of water and sewer utilities.

3 (b) The commission and the utility commission shall adopt
4 and enforce rules reasonably required in the exercise of [~~its~~]
5 powers and jurisdiction of each agency, including rules governing
6 practice and procedure before the commission and the utility
7 commission.

8 (c) The commission and the utility commission may call and
9 hold hearings, administer oaths, receive evidence at hearings,
10 issue subpoenas to compel the attendance of witnesses and the
11 production of papers and documents, and make findings of fact and
12 decisions with respect to administering this chapter or the rules,
13 orders, or other actions of the commission or the utility
14 commission.

15 (c-1) In addition to the powers and duties of the State
16 Office of Administrative Hearings under Title 2, Utilities Code,
17 the utility commission may delegate to an administrative law judge
18 of the State Office of Administrative Hearings the responsibility
19 and authority to issue interlocutory orders related to interim
20 rates under this chapter.

21 (d) The utility commission may issue emergency orders, with
22 or without a hearing:

23 (1) to compel a water or sewer service provider that
24 has obtained or is required to obtain a certificate of public
25 convenience and necessity to provide continuous and adequate water
26 service, sewer service, or both, if the discontinuance of the
27 service is imminent or has occurred because of the service

1 provider's actions or failure to act; and

2 (2) to compel a retail public utility to provide an
3 emergency interconnection with a neighboring retail public utility
4 for the provision of temporary water or sewer service, or both, for
5 not more than 90 days if service discontinuance or serious
6 impairment in service is imminent or has occurred.

7 (e) The utility commission may establish reasonable
8 compensation for the temporary service required under Subsection
9 (d)(2) [~~of this section~~] and may allow the retail public utility
10 receiving the service to make a temporary adjustment to its rate
11 structure to ensure proper payment.

12 (f) If an order is issued under Subsection (d) without a
13 hearing, the order shall fix a time, as soon after the emergency
14 order is issued as is practicable, and place for a hearing to be
15 held before the utility commission.

16 (g) The regulatory assessment required by Section 5.701(n)
17 [~~5.235(n) of this code~~] is not a rate and is not reviewable by the
18 utility commission under Section 13.043 [~~of this code~~]. The
19 commission has the authority to enforce payment and collection of
20 the regulatory assessment.

21 SECTION 14. Section 13.042, Water Code, is amended to read
22 as follows:

23 Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND
24 APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the
25 limitations imposed in this chapter and for the purpose of
26 regulating rates and services so that those rates may be fair, just,
27 and reasonable and the services adequate and efficient, the

1 governing body of each municipality has exclusive original
2 jurisdiction over all water and sewer utility rates, operations,
3 and services provided by a water and sewer utility within its
4 corporate limits.

5 (b) The governing body of a municipality by ordinance may
6 elect to have the utility commission exercise exclusive original
7 jurisdiction over the utility rates, operation, and services of
8 utilities, within the incorporated limits of the municipality.

9 (c) The governing body of a municipality that surrenders its
10 jurisdiction to the utility commission may reinstate its
11 jurisdiction by ordinance at any time after the second anniversary
12 of the date on which the municipality surrendered its jurisdiction
13 to the utility commission, except that the municipality may not
14 reinstate its jurisdiction during the pendency of a rate proceeding
15 before the utility commission. The municipality may not surrender
16 its jurisdiction again until the second anniversary of the date on
17 which the municipality reinstates jurisdiction.

18 (d) The utility commission shall have exclusive appellate
19 jurisdiction to review orders or ordinances of those municipalities
20 as provided in this chapter.

21 (e) The utility commission shall have exclusive original
22 jurisdiction over water and sewer utility rates, operations, and
23 services not within the incorporated limits of a municipality
24 exercising exclusive original jurisdiction over those rates,
25 operations, and services as provided in this chapter.

26 (f) This subchapter does not give the utility commission
27 power or jurisdiction to regulate or supervise the rates or service

1 of a utility owned and operated by a municipality, directly or
2 through a municipally owned corporation, within its corporate
3 limits or to affect or limit the power, jurisdiction, or duties of a
4 municipality that regulates land and supervises water and sewer
5 utilities within its corporate limits, except as provided by this
6 code.

7 SECTION 15. Subsections (a), (b), (c), (e), (f), (g), (h),
8 and (j), Section 13.043, Water Code, are amended to read as follows:

9 (a) Any party to a rate proceeding before the governing body
10 of a municipality may appeal the decision of the governing body to
11 the utility commission. This subsection does not apply to a
12 municipally owned utility. An appeal under this subsection must be
13 initiated within 90 days after the date of notice of the final
14 decision by the governing body, or within 30 days if the appeal
15 relates to the rates of a Class A utility, by filing a petition for
16 review with the utility commission and by serving copies on all
17 parties to the original rate proceeding. The utility commission
18 shall hear the appeal de novo and shall fix in its final order the
19 rates the governing body should have fixed in the action from which
20 the appeal was taken and may include reasonable expenses incurred
21 in the appeal proceedings. The utility commission may establish
22 the effective date for the utility commission's rates at the
23 original effective date as proposed by the utility provider and may
24 order refunds or allow a surcharge to recover lost revenues. The
25 utility commission may consider only the information that was
26 available to the governing body at the time the governing body made
27 its decision and evidence of reasonable expenses incurred in the

1 appeal proceedings.

2 (b) Ratepayers of the following entities may appeal the
3 decision of the governing body of the entity affecting their water,
4 drainage, or sewer rates to the utility commission:

5 (1) a nonprofit water supply or sewer service
6 corporation created and operating under Chapter 67;

7 (2) a utility under the jurisdiction of a municipality
8 inside the corporate limits of the municipality;

9 (3) a municipally owned utility, if the ratepayers
10 reside outside the corporate limits of the municipality;

11 (4) a district or authority created under Article III,
12 Section 52, or Article XVI, Section 59, of the Texas Constitution
13 that provides water or sewer service to household users; and

14 (5) a utility owned by an affected county, if the
15 ratepayer's rates are actually or may be adversely affected. For
16 the purposes of this section ratepayers who reside outside the
17 boundaries of the district or authority shall be considered a
18 separate class from ratepayers who reside inside those boundaries.

19 (c) An appeal under Subsection (b) [~~of this section~~] must be
20 initiated by filing a petition for review with the utility
21 commission and the entity providing service within 90 days after
22 the effective day of the rate change or, if appealing under
23 Subdivision (b)(2) or (5) [~~of this section~~], within 90 days after
24 the date on which the governing body of the municipality or affected
25 county makes a final decision. The petition must be signed by the
26 lesser of 10,000 or 10 percent of those ratepayers whose rates have
27 been changed and who are eligible to appeal under Subsection (b) [~~of~~

1 ~~this section~~].

2 (e) In an appeal under Subsection (b) [~~of this section~~], the
3 utility commission shall hear the appeal de novo and shall fix in
4 its final order the rates the governing body should have fixed in
5 the action from which the appeal was taken. The utility commission
6 may establish the effective date for the utility commission's rates
7 at the original effective date as proposed by the service provider,
8 may order refunds or allow a surcharge to recover lost revenues, and
9 may allow recovery of reasonable expenses incurred by the retail
10 public utility in the appeal proceedings. The utility commission
11 may consider only the information that was available to the
12 governing body at the time the governing body made its decision and
13 evidence of reasonable expenses incurred by the retail public
14 utility in the appeal proceedings. The rates established by the
15 utility commission in an appeal under Subsection (b) [~~of this~~
16 ~~section~~] remain in effect until the first anniversary of the
17 effective date proposed by the retail public utility for the rates
18 being appealed or until changed by the service provider, whichever
19 date is later, unless the utility commission determines that a
20 financial hardship exists.

21 (f) A retail public utility that receives water or sewer
22 service from another retail public utility or political subdivision
23 of the state, including an affected county, may appeal to the
24 utility commission a decision of the provider of water or sewer
25 service affecting the amount paid for water or sewer service. An
26 appeal under this subsection must be initiated within 90 days after
27 the date of notice of the decision is received from the provider of

1 water or sewer service by the filing of a petition by the retail
2 public utility.

3 (g) An applicant for service from an affected county or a
4 water supply or sewer service corporation may appeal to the utility
5 commission a decision of the county or water supply or sewer service
6 corporation affecting the amount to be paid to obtain service other
7 than the regular membership or tap fees. In addition to the factors
8 specified under Subsection (j), in an appeal brought under this
9 subsection the utility commission shall determine whether the
10 amount paid by the applicant is consistent with the tariff of the
11 water supply or sewer service corporation and is reasonably related
12 to the cost of installing on-site and off-site facilities to
13 provide service to that applicant. If the utility commission finds
14 the amount charged to be clearly unreasonable, it shall establish
15 the fee to be paid for that applicant. An appeal under this
16 subsection must be initiated within 90 days after the date written
17 notice is provided to the applicant or member of the decision of an
18 affected county or water supply or sewer service corporation
19 relating to the applicant's initial request for that service. A
20 determination made by the utility commission on an appeal under
21 this subsection is binding on all similarly situated applicants for
22 service, and the utility commission may not consider other appeals
23 on the same issue until the applicable provisions of the tariff of
24 the water supply or sewer service corporation are amended.

25 (h) The utility commission may, on a motion by the utility
26 commission [~~executive director~~] or by the appellant under
27 Subsection (a), (b), or (f) [~~of this section~~], establish interim

1 rates to be in effect until a final decision is made.

2 (j) In an appeal under this section, the utility commission
3 shall ensure that every rate made, demanded, or received by any
4 retail public utility or by any two or more retail public utilities
5 jointly shall be just and reasonable. Rates shall not be
6 unreasonably preferential, prejudicial, or discriminatory but
7 shall be sufficient, equitable, and consistent in application to
8 each class of customers. The utility commission shall use a
9 methodology that preserves the financial integrity of the retail
10 public utility. For agreements between municipalities the utility
11 commission shall consider the terms of any wholesale water or sewer
12 service agreement in an appellate rate proceeding.

13 SECTION 16. Subsection (b), Section 13.044, Water Code, is
14 amended to read as follows:

15 (b) Notwithstanding the provisions of any resolution,
16 ordinance, or agreement, a district may appeal the rates imposed by
17 the municipality by filing a petition with the utility commission.
18 The utility commission shall hear the appeal de novo and the
19 municipality shall have the burden of proof to establish that the
20 rates are just and reasonable. The utility commission shall fix the
21 rates to be charged by the municipality and the municipality may not
22 increase such rates without the approval of the utility commission.

23 SECTION 17. Section 13.046, Water Code, is amended to read
24 as follows:

25 Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR
26 NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The
27 utility commission by rule shall establish a procedure that allows

1 a retail public utility that takes over the provision of services
2 for a nonfunctioning retail water or sewer utility service provider
3 to charge a reasonable rate for the services provided to the
4 customers of the nonfunctioning system and to bill the customers
5 for the services at that rate immediately to recover service costs.

6 (b) The rules must provide a streamlined process that the
7 retail public utility that takes over the nonfunctioning system may
8 use to apply to the utility commission for a ruling on the
9 reasonableness of the rates the utility is charging under
10 Subsection (a). The process must allow for adequate consideration
11 of costs for interconnection or other costs incurred in making
12 services available and of the costs that may necessarily be
13 incurred to bring the nonfunctioning system into compliance with
14 utility commission and commission rules.

15 (c) The utility commission shall provide a reasonable
16 period for the retail public utility that takes over the
17 nonfunctioning system to bring the nonfunctioning system into
18 compliance with utility commission and commission rules during
19 which the utility commission or the commission may not impose a
20 penalty for any deficiency in the system that is present at the time
21 the utility takes over the nonfunctioning system. The utility
22 commission must consult with the utility before determining the
23 period and may grant an extension of the period for good cause.

24 SECTION 18. Section 13.081, Water Code, is amended to read
25 as follows:

26 Sec. 13.081. FRANCHISES. This chapter may not be construed
27 as in any way limiting the rights and powers of a municipality to

1 grant or refuse franchises to use the streets and alleys within its
2 limits and to make the statutory charges for their use, but no
3 provision of any franchise agreement may limit or interfere with
4 any power conferred on the utility commission by this chapter. If a
5 municipality performs regulatory functions under this chapter, it
6 may make such other charges as may be provided in the applicable
7 franchise agreement, together with any other charges permitted by
8 this chapter.

9 SECTION 19. Section 13.082, Water Code, is amended to read
10 as follows:

11 Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT
12 AREAS. (a) Notwithstanding any other provision of this section,
13 municipalities shall continue to regulate each kind of local
14 utility service inside their boundaries until the utility
15 commission has assumed jurisdiction over the respective utility
16 pursuant to this chapter.

17 (b) If a municipality does not surrender its jurisdiction,
18 local utility service within the boundaries of the municipality
19 shall be exempt from regulation by the utility commission under
20 this chapter to the extent that this chapter applies to local
21 service, and the municipality shall have, regarding service within
22 its boundaries, the right to exercise the same regulatory powers
23 under the same standards and rules as the utility commission or
24 other standards and rules not inconsistent with them. The utility
25 commission's rules relating to service and response to requests for
26 service for utilities operating within a municipality's corporate
27 limits apply unless the municipality adopts its own rules.

1 (c) Notwithstanding any election, the utility commission
2 may consider water and sewer utilities' revenues and return on
3 investment in exempt areas in fixing rates and charges in nonexempt
4 areas and may also exercise the powers conferred necessary to give
5 effect to orders under this chapter for the benefit of nonexempt
6 areas. Likewise, in fixing rates and charges in the exempt area,
7 the governing body may consider water and sewer utilities' revenues
8 and return on investment in nonexempt areas.

9 (d) Utilities serving exempt areas are subject to the
10 reporting requirements of this chapter. Those reports and tariffs
11 shall be filed with the governing body of the municipality as well
12 as with the utility commission.

13 (e) This section does not limit the duty and power of the
14 utility commission to regulate service and rates of municipally
15 regulated water and sewer utilities for service provided to other
16 areas in Texas.

17 SECTION 20. Section 13.085, Water Code, is amended to read
18 as follows:

19 Sec. 13.085. ASSISTANCE BY UTILITY COMMISSION. On request,
20 the utility commission may advise and assist municipalities and
21 affected counties in connection with questions and proceedings
22 arising under this chapter. This assistance may include aid to
23 municipalities or an affected county in connection with matters
24 pending before the utility commission, the courts, the governing
25 body of any municipality, or the commissioners court of an affected
26 county, including making members of the staff available to them as
27 witnesses and otherwise providing evidence.

SECTION 21. Subsection (c), Section 13.087, Water Code, is amended to read as follows:

(c) Notwithstanding any other provision of this chapter, the utility commission has jurisdiction to enforce this section.

SECTION 22. Subsections (a), (b), (c), and (e), Section 13.131, Water Code, are amended to read as follows:

(a) Every water and sewer utility shall keep and render to the regulatory authority in the manner and form prescribed by the utility commission uniform accounts of all business transacted. The utility commission may also prescribe forms of books, accounts, records, and memoranda to be kept by those utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of money, and any other forms, records, and memoranda that in the judgment of the utility commission may be necessary to carry out this chapter.

(b) In the case of a utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by that agency may be considered a sufficient compliance with the system prescribed by the utility commission. However, the utility commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the utility commission for a utility or class of utilities may not conflict or be inconsistent with the systems and forms established by a federal agency for that utility

or class of utilities.

(c) The utility commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each utility and shall require every utility to carry a proper and adequate depreciation account in accordance with those rates and methods and with any other rules the utility commission prescribes. Rules adopted under this subsection must require the book cost less net salvage of depreciable utility plant retired to be charged in its entirety to the accumulated depreciation account in a manner consistent with accounting treatment of regulated electric and gas utilities in this state. Those rates, methods, and accounts shall be utilized uniformly and consistently throughout the rate-setting and appeal proceedings.

(e) Every utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the utility commission and to comply with all directions of the regulatory authority relating to those books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

SECTION 23. Section 13.132, Water Code, is amended to read as follows:

Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The utility commission may:

(1) require that water and sewer utilities report to it any information relating to themselves and affiliated interests both inside and outside this state that it considers useful in the

1 administration of this chapter, including any information relating
2 to a transaction between the utility and an affiliated interest
3 inside or outside this state, to the extent that the transaction is
4 subject to the utility commission's jurisdiction;

5 (2) establish forms for all reports;

6 (3) determine the time for reports and the frequency
7 with which any reports are to be made;

8 (4) require that any reports be made under oath;

9 (5) require that a copy of any contract or arrangement
10 between any utility and any affiliated interest be filed with it and
11 require that such a contract or arrangement that is not in writing
12 be reduced to writing;

13 (6) require that a copy of any report filed with any
14 federal agency or any governmental agency or body of any other state
15 be filed with it; and

16 (7) require that a copy of annual reports showing all
17 payments of compensation, other than salary or wages subject to the
18 withholding of federal income tax, made to residents of Texas, or
19 with respect to legal, administrative, or legislative matters in
20 Texas, or for representation before the Texas Legislature or any
21 governmental agency or body be filed with it.

22 (b) On the request of the governing body of any
23 municipality, the utility commission may provide sufficient staff
24 members to advise and consult with the municipality on any pending
25 matter.

26 SECTION 24. Section 13.1325, Water Code, is amended to read
27 as follows:

1 Sec. 13.1325. ELECTRONIC COPIES OF RATE INFORMATION. On
 2 request, the utility commission [~~state agency with jurisdiction~~
 3 ~~over rates charged by water and sewer utilities~~] shall provide, at a
 4 reasonable cost, electronic copies of or Internet access to all
 5 information provided to the utility commission [~~agency~~] under
 6 Sections 13.016 and [~~7~~] 13.043 [~~7~~] and Subchapter F [~~13.187~~] to the
 7 extent that the information is available and is not confidential.
 8 Copies of all information provided to the utility commission
 9 [~~agency~~] shall be provided to the Office of Public Utility Counsel,
 10 on request, at no cost to the office.

11 SECTION 25. Subsection (b), Section 13.133, Water Code, is
 12 amended to read as follows:

13 (b) The regulatory authority may require, by order or
 14 subpoena served on any utility, the production within this state at
 15 the time and place it may designate of any books, accounts, papers,
 16 or records kept by that utility outside the state or verified copies
 17 of them if the regulatory authority [~~commission~~] so orders. A
 18 utility failing or refusing to comply with such an order or subpoena
 19 violates this chapter.

20 SECTION 26. Section 13.136, Water Code, is amended by
 21 amending Subsections (b) and (c) and adding Subsection (b-1) to
 22 read as follows:

23 (b) The utility commission by rule shall require each [~~Each~~]
 24 utility to annually [~~shall~~] file a service, [and] financial, and
 25 normalized earnings report in a form and at times specified by
 26 utility commission rule. The report must include information
 27 sufficient to enable the utility commission to properly monitor

1 utilities in this state. The utility commission shall make
2 available to the public information in the report the utility does
3 not file as confidential.

4 (b-1) The utility commission shall provide copies of a
5 report described by Subsection (b) that include information filed
6 as confidential to the Office of Public Utility Counsel on request,
7 at no cost to the office.

8 (c) Every water supply or sewer service corporation shall
9 file with the utility commission tariffs showing all rates that are
10 subject to the appellate jurisdiction of the utility commission and
11 that are in force at the time for any utility service, product, or
12 commodity offered. Every water supply or sewer service corporation
13 shall file with and as a part of those tariffs all rules and
14 regulations relating to or affecting the rates, utility service,
15 product, or commodity furnished. The filing required under this
16 subsection shall be for informational purposes only.

17 SECTION 27. Section 13.137, Water Code, is amended to read
18 as follows:

19 Sec. 13.137. OFFICE AND OTHER BUSINESS LOCATIONS OF
20 UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall:

21 (1) make available and notify its customers of a
22 business location where its customers may make payments to prevent
23 disconnection of or to restore service:

24 (A) in each county in which the utility provides
25 service; or

26 (B) not more than 20 miles from the residence of
27 any residential customer if there is no location to receive

1 payments in the county; and

2 (2) have an office in a county of this state or in the
3 immediate area in which its property or some part of its property is
4 located in which it shall keep all books, accounts, records, and
5 memoranda required by the utility commission to be kept in this
6 state.

7 (b) The utility commission by rule may provide for waiving
8 the requirements of Subsection (a)(1) for a utility for which
9 meeting those requirements would cause a rate increase or otherwise
10 harm or inconvenience customers. The rules must provide for an
11 additional 14 days to be given for a customer to pay before a
12 utility that is granted a waiver may disconnect service for late
13 payment.

14 (c) Books, accounts, records, or memoranda required by the
15 regulatory authority to be kept in the state may not be removed from
16 the state, except on conditions prescribed by the utility
17 commission.

18 SECTION 28. Subsection (b), Section 13.139, Water Code, is
19 amended to read as follows:

20 (b) The governing body of a municipality, as the regulatory
21 authority for public utilities operating within its corporate
22 limits, and the utility commission or the commission as the
23 regulatory authority for public utilities operating outside the
24 corporate limits of any municipality, after reasonable notice and
25 hearing on its own motion, may:

26 (1) ascertain and fix just and reasonable standards,
27 classifications, regulations, service rules, minimum service

standards or practices to be observed and followed with respect to the service to be furnished;

(2) ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, or other condition pertaining to the supply of the service;

(3) prescribe reasonable regulations for the examination and testing of the service and for the measurement of service; and

(4) establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments, and equipment used for the measurement of any utility service.

SECTION 29. Section 13.1395, Water Code, is amended by adding Subsection (m) to read as follows:

(m) The commission shall coordinate with the utility commission in the administration of this section.

SECTION 30. Subsections (b), (c), and (f), Section 13.1396, Water Code, are amended to read as follows:

(b) An affected utility shall submit to the office of emergency management of each county in which the utility has more than one customer, the utility commission [~~Public Utility Commission of Texas~~], and the office of emergency management of the governor a copy of:

(1) the affected utility's emergency preparedness plan approved under Section 13.1395; and

(2) the commission's notification to the affected utility that the plan is accepted.

(c) Each affected utility shall submit to the utility commission, each electric utility that provides transmission and distribution service to the affected utility, each retail electric provider that sells electric power to the affected utility, the office of emergency management of each county in which the utility has water and wastewater facilities that qualify for critical load status under rules adopted by the utility commission [~~Public Utility Commission of Texas, the Public Utility Commission of Texas~~], and the division of emergency management of the governor:

(1) information identifying the location and providing a general description of all water and wastewater facilities that qualify for critical load status; and

(2) emergency contact information for the affected utility, including:

(A) the person who will serve as a point of contact and the person's telephone number;

(B) the person who will serve as an alternative point of contact and the person's telephone number; and

(C) the affected utility's mailing address.

(f) Not later than May 1 of each year, each electric utility and each retail electric provider shall determine whether the facilities of the affected utility qualify for critical load status under rules adopted by the utility commission [~~Public Utility Commission of Texas~~].

SECTION 31. Subsection (b), Section 13.142, Water Code, is amended to read as follows:

(b) The utility commission shall adopt rules concerning

1 payment of utility bills that are consistent with Chapter 2251,
2 Government Code.

3 SECTION 32. Section 13.144, Water Code, is amended to read
4 as follows:

5 Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A
6 district or authority created under Section 52, Article III, or
7 Section 59, Article XVI, Texas Constitution, a retail public
8 utility, a wholesale water service, or other person providing a
9 retail public utility with a wholesale water supply shall provide
10 the utility commission and the commission with a certified copy of
11 any wholesale water supply contract with a retail public utility
12 within 30 days after the date of the execution of the contract. The
13 submission must include the amount of water being supplied, term of
14 the contract, consideration being given for the water, purpose of
15 use, location of use, source of supply, point of delivery,
16 limitations on the reuse of water, a disclosure of any affiliated
17 interest between the parties to the contract, and any other
18 condition or agreement relating to the contract.

19 SECTION 33. Subsection (a), Section 13.147, Water Code, is
20 amended to read as follows:

21 (a) A retail public utility providing water service may
22 contract with a retail public utility providing sewer service to
23 bill and collect the sewer service provider's fees and payments as
24 part of a consolidated process with the billing and collection of
25 the water service provider's fees and payments. The water service
26 provider may provide that service only for customers who are served
27 by both providers in an area covered by both providers'

1 certificates of public convenience and necessity. If the water
2 service provider refuses to enter into a contract under this
3 section or if the water service provider and sewer service provider
4 cannot agree on the terms of a contract, the sewer service provider
5 may petition the utility commission to issue an order requiring the
6 water service provider to provide that service.

7 SECTION 34. Subsection (b), Section 13.181, Water Code, is
8 amended to read as follows:

9 (b) Subject to this chapter, the utility commission has all
10 authority and power of the state to ensure compliance with the
11 obligations of utilities under this chapter. For this purpose the
12 regulatory authority may fix and regulate rates of utilities,
13 including rules and regulations for determining the classification
14 of customers and services and for determining the applicability of
15 rates. A rule or order of the regulatory authority may not conflict
16 with the rulings of any federal regulatory body. The utility
17 commission may adopt rules which authorize a utility which is
18 permitted under Section 13.242(c) to provide service without a
19 certificate of public convenience and necessity to request or
20 implement a rate increase and operate according to rules,
21 regulations, and standards of service other than those otherwise
22 required under this chapter provided that rates are just and
23 reasonable for customers and the utility and that service is safe,
24 adequate, efficient, and reasonable.

25 SECTION 35. Subsections (c) and (d), Section 13.182, Water
26 Code, are amended to read as follows:

27 (c) For ratemaking purposes, the utility commission may

1 treat two or more municipalities served by a utility as a single
2 class wherever the utility commission considers that treatment to
3 be appropriate.

4 (d) The utility commission by rule shall establish a
5 preference that rates under a consolidated tariff be consolidated
6 by region. The regions under consolidated tariffs must be
7 determined on a case-by-case basis.

8 SECTION 36. Subsection (d), Section 13.183, Water Code, is
9 amended to read as follows:

10 (d) A regulatory authority other than the utility
11 commission may not approve an acquisition adjustment for a system
12 purchased before the effective date of an ordinance authorizing
13 acquisition adjustments.

14 SECTION 37. Subsection (a), Section 13.184, Water Code, is
15 amended to read as follows:

16 (a) Unless the utility commission establishes alternate
17 rate methodologies in accordance with Section 13.183(c), the
18 utility commission may not prescribe any rate that will yield more
19 than a fair return on the invested capital used and useful in
20 rendering service to the public. The governing body of a
21 municipality exercising its original jurisdiction over rates and
22 services may use alternate ratemaking methodologies established by
23 ordinance or by utility commission rule in accordance with Section
24 13.183(c). Unless the municipal regulatory authority uses
25 alternate ratemaking methodologies established by ordinance or by
26 utility commission rule in accordance with Section 13.183(c), it
27 may not prescribe any rate that will yield more than a fair return

1 on the invested capital used and useful in rendering service to the
2 public.

3 SECTION 38. Subsections (d) and (h), Section 13.185, Water
4 Code, are amended to read as follows:

5 (d) Net income is the total revenues of the utility less all
6 reasonable and necessary expenses as determined by the regulatory
7 authority. The regulatory authority shall:

8 (1) base a utility's expenses on historic test year
9 information adjusted for known and measurable changes, as
10 determined by utility commission rules; and

11 (2) determine expenses and revenues in a manner
12 consistent with Subsections (e) through (h) of this section.

13 (h) The regulatory authority may not include for ratemaking
14 purposes:

15 (1) legislative advocacy expenses, whether made
16 directly or indirectly, including legislative advocacy expenses
17 included in trade association dues;

18 (2) costs of processing a refund or credit under this
19 subchapter [~~Section 13.187 of this chapter~~]; or

20 (3) any expenditure found by the regulatory authority
21 to be unreasonable, unnecessary, or not in the public interest,
22 including executive salaries, advertising expenses, legal
23 expenses, and civil penalties or fines.

24 SECTION 39. Section 13.187, Water Code, is amended to read
25 as follows:

26 Sec. 13.187. CLASS A UTILITIES: STATEMENT OF INTENT TO
27 CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) This

section applies only to a Class A utility.

(a-1) A utility may not make changes in its rates except by sending by mail or e-mail ~~[delivering]~~ a statement of intent to each ratepayer and to ~~[with]~~ the regulatory authority having original jurisdiction at least 35 ~~[60]~~ days before the effective date of the proposed change. The utility may send the statement of intent to a ratepayer by e-mail only if the ratepayer has agreed to receive communications electronically. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include:

(1) the information required by the regulatory authority's rules;

(2) a billing comparison regarding the existing water rate and the new water rate computed for the use of:

(A) 10,000 gallons of water; and

(B) 30,000 gallons of water; ~~[and]~~

(3) a billing comparison regarding the existing sewer rate and the new sewer rate computed for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services; and

(4) a description of the process by which a ratepayer may intervene in the ratemaking proceeding.

(b) The utility shall mail, send by e-mail, or deliver a [A] copy of the statement of intent ~~[shall be mailed, sent by e-mail, or delivered]~~ to the Office of Public Utility Counsel, appropriate offices of each affected municipality, and ~~[to]~~ any other affected persons as required by the regulatory authority's rules.

1 (c) When the statement of intent is delivered, the utility
2 shall file with the regulatory authority an application to change
3 rates. The application must include information the regulatory
4 authority requires by rule and any appropriate cost and rate
5 schedules and written testimony supporting the requested rate
6 increase. If the utility fails to provide within a reasonable time
7 after the application is filed the necessary documentation or other
8 evidence that supports the costs and expenses that are shown in the
9 application, the regulatory authority may disallow the
10 nonsupported costs or expenses.

11 (d) Except as provided by Subsections [~~Subsection~~] (d-1)
12 and (e), if the application or the statement of intent is not
13 substantially complete or does not comply with the regulatory
14 authority's rules, it may be rejected and the effective date of the
15 rate change may be suspended until a properly completed application
16 is accepted by the regulatory authority and a proper statement of
17 intent is provided. The utility commission may also suspend the
18 effective date of any rate change if the utility does not have a
19 certificate of public convenience and necessity or a completed
20 application for a certificate or to transfer a certificate pending
21 before the utility commission or if the utility is delinquent in
22 paying the assessment and any applicable penalties or interest
23 required by Section 5.701(n) [~~of this code~~].

24 (d-1) After written notice to the utility, a local
25 regulatory authority may suspend the effective date of a rate
26 change for not more than 90 days from the proposed effective date[
27 ~~except that the suspension shall be extended by two days for each~~

1 ~~day a hearing exceeds 15 days~~]. If the local regulatory authority
 2 does not make a final determination on the proposed rate before the
 3 expiration of the ~~[applicable]~~ suspension period, the proposed rate
 4 shall be considered approved. This ~~[The]~~ approval is subject to the
 5 authority of the local regulatory authority thereafter to continue
 6 ~~[authority's continuation of]~~ a hearing in progress.

7 (e) After written notice to the utility, the utility
 8 commission may suspend the effective date of a rate change for not
 9 more than 150 days from the proposed effective date. If the utility
 10 commission does not make a final determination on the proposed rate
 11 before the expiration of the suspension period, the proposed rate
 12 shall be considered approved. This approval is subject to the
 13 authority of the utility commission thereafter to continue a
 14 hearing in progress ~~[If, before the 91st day after the effective~~
 15 ~~date of the rate change, the regulatory authority receives a~~
 16 ~~complaint from any affected municipality, or from the lesser of~~
 17 ~~1,000 or 10 percent of the ratepayers of the utility over whose~~
 18 ~~rates the regulatory authority has original jurisdiction, the~~
 19 ~~regulatory authority shall set the matter for hearing]~~.

20 (e-1) The 150-day period described by Subsection (e) shall
 21 be extended two days for each day a hearing exceeds 15 days.

22 (f) The regulatory authority shall, not later than the 30th
 23 day after the effective date of the change, begin a hearing to
 24 determine the propriety of the change ~~[may set the matter for~~
 25 ~~hearing on its own motion at any time within 120 days after the~~
 26 ~~effective date of the rate change]~~. If the regulatory authority is
 27 the utility commission, the utility commission may refer the matter

1 to the State Office of Administrative Hearings as provided by
 2 utility commission rules [~~If more than half of the ratepayers of the~~
 3 ~~utility receive service in a county with a population of more than~~
 4 ~~3.3 million, the hearing must be held at a location in that county].~~

5 (g) A local regulatory authority [~~The~~] hearing described by
 6 this section may be informal.

7 (g-1) If the regulatory authority is the utility
 8 commission, the utility commission shall give reasonable notice of
 9 the hearing, including notice to the governing body of each
 10 affected municipality and county. The utility is not required to
 11 provide a formal answer or file any other formal pleading in
 12 response to the notice, and the absence of an answer does not affect
 13 an order for a hearing.

14 (h) If, after hearing, the regulatory authority finds the
 15 rates currently being charged or those proposed to be charged are
 16 unreasonable or in violation of law, the regulatory authority shall
 17 determine the rates to be charged by the utility and shall fix the
 18 rates by order served on the utility.

19 (i) A utility may put a changed rate into effect throughout
 20 the area in which the utility sought to change its rates, including
 21 an area over which the utility commission is exercising appellate
 22 or original jurisdiction, by filing a bond with the utility
 23 commission if the suspension period has been extended under
 24 Subsection (e-1) and the utility commission fails to make a final
 25 determination before the 151st day after the date the rate change
 26 would otherwise be effective.

27 (j) The bonded rate may not exceed the proposed rate. The

bond must be payable to the utility commission in an amount, in a form, and with a surety approved by the utility commission and conditioned on refund ~~[The regulatory authority, pending final action in a rate proceeding, may order the utility to deposit all or part of the rate increase received or to be received into an escrow account with a financial institution approved by the regulatory authority].~~

(k) Unless otherwise agreed to by the parties to the rate proceeding, the utility shall refund or credit against future bills:

(1) all sums collected under the bonded rates ~~[during the pendency of the rate proceeding]~~ in excess of the rate finally ordered; and

(2) [plus] interest on those sums at the current interest rate as determined by the regulatory authority.

~~[(j) For good cause shown, the regulatory authority may authorize the release of funds to the utility from the escrow account during the pendency of the proceeding.]~~

~~[(k) If the regulatory authority receives at least the number of complaints from ratepayers required for the regulatory authority to set a hearing under Subsection (e), the regulatory authority may, pending the hearing and a decision, suspend the date the rate change would otherwise be effective. Except as provided by Subsection (d-1), the proposed rate may not be suspended for longer than:~~

~~[(1) 90 days by a local regulatory authority; or~~

~~[(2) 150 days by the commission.]~~

(1) At any time during the pendency of the rate proceeding the regulatory authority may fix interim rates to remain in effect during the applicable suspension period under Subsection (d-1) or Subsections (e) and (e-1) or until a final determination is made on the proposed rate. If the regulatory authority does not establish interim rates, the rates in effect when the application described by Subsection (c) was filed continue in effect during the suspension period.

(m) If the regulatory authority sets a final rate that is higher than the interim rate, the utility shall be allowed to collect the difference between the interim rate and final rate unless otherwise agreed to by the parties to the rate proceeding.

(n) For good cause shown, the regulatory authority may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

(o) If a regulatory authority other than the utility commission establishes interim rates or bonded rates [~~an escrow account~~], the regulatory authority must make a final determination on the rates not later than the first anniversary of the effective date of the interim rates or bonded [~~escrowed~~] rates or the rates are automatically approved as requested by the utility.

(p) Except to implement a rate adjustment provision approved by the regulatory authority by rule or ordinance, as applicable, or to adjust the rates of a newly acquired utility system, a utility or two or more utilities under common control and

ownership may not file a statement of intent to increase its rates more than once in a 12-month period, unless the regulatory authority determines that a financial hardship exists. If the regulatory authority requires the utility to deliver a corrected statement of intent, the utility is not considered to be in violation of the 12-month filing requirement.

SECTION 40. Subchapter F, Chapter 13, Water Code, is amended by adding Sections 13.1871 and 13.1872 to read as follows:

Sec. 13.1871. CLASS B UTILITIES: STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) Except as provided by Section 13.1872, this section applies only to a Class B utility.

(b) A utility may not make changes in its rates except by sending by mail or e-mail a statement of intent to each ratepayer and to the regulatory authority having original jurisdiction at least 35 days before the effective date of the proposed change. The utility may send the statement of intent to a ratepayer by e-mail only if the ratepayer has agreed to receive communications electronically. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include:

(1) the information required by the regulatory authority's rules;

(2) a billing comparison regarding the existing water rate and the new water rate computed for the use of:

(A) 10,000 gallons of water; and

1 (B) 30,000 gallons of water;

2 (3) a billing comparison regarding the existing sewer
3 rate and the new sewer rate computed for the use of 10,000 gallons,
4 unless the utility proposes a flat rate for sewer services; and

5 (4) a description of the process by which a ratepayer
6 may file a complaint under Subsection (i).

7 (c) The utility shall mail, send by e-mail, or deliver a
8 copy of the statement of intent to the appropriate offices of each
9 affected municipality and to any other affected persons as required
10 by the regulatory authority's rules.

11 (d) When the statement of intent is delivered, the utility
12 shall file with the regulatory authority an application to change
13 rates. The application must include information the regulatory
14 authority requires by rule and any appropriate cost and rate
15 schedules supporting the requested rate increase. In adopting
16 rules relating to the information required in the application, the
17 utility commission shall ensure that a utility can file a less
18 burdensome and complex application than is required of a Class A
19 utility. If the utility fails to provide within a reasonable time
20 after the application is filed the necessary documentation or other
21 evidence that supports the costs and expenses that are shown in the
22 application, the regulatory authority may disallow the
23 nonsupported costs or expenses.

24 (e) Except as provided by Subsection (f) or (g), if the
25 application or the statement of intent is not substantially
26 complete or does not comply with the regulatory authority's rules,
27 it may be rejected and the effective date of the rate change may be

suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The utility commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the utility commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n).

(f) After written notice to the utility, a local regulatory authority may suspend the effective date of a rate change for not more than 90 days from the proposed effective date. If the local regulatory authority does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the local regulatory authority thereafter to continue a hearing in progress.

(g) After written notice to the utility, the utility commission may suspend the effective date of a rate change for not more than 205 days from the proposed effective date. If the utility commission does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the utility commission thereafter to continue a hearing in progress.

(h) The 205-day period described by Subsection (g) shall be extended by two days for each day a hearing exceeds 15 days.

1 (i) If, before the 91st day after the effective date of the
2 rate change, the regulatory authority receives a complaint from any
3 affected municipality, or from the lesser of 1,000 or 10 percent of
4 the ratepayers of the utility over whose rates the regulatory
5 authority has original jurisdiction, the regulatory authority
6 shall set the matter for hearing.

7 (j) If the regulatory authority receives at least the number
8 of complaints from ratepayers required for the regulatory authority
9 to set a hearing under Subsection (i), the regulatory authority
10 may, pending the hearing and a decision, suspend the date the rate
11 change would otherwise be effective. Except as provided by
12 Subsection (h), the proposed rate may not be suspended for longer
13 than:

14 (1) 90 days by a local regulatory authority; or

15 (2) 205 days by the utility commission.

16 (k) The regulatory authority may set the matter for hearing
17 on its own motion at any time within 120 days after the effective
18 date of the rate change.

19 (l) The hearing may be informal.

20 (m) The regulatory authority shall give reasonable notice
21 of the hearing, including notice to the governing body of each
22 affected municipality and county. The utility is not required to
23 provide a formal answer or file any other formal pleading in
24 response to the notice, and the absence of an answer does not affect
25 an order for a hearing.

26 (n) The utility shall mail notice of the hearing to each
27 ratepayer before the hearing. The notice must include a

1 description of the process by which a ratepayer may intervene in the
2 ratemaking proceeding.

3 (o) If, after hearing, the regulatory authority finds the
4 rates currently being charged or those proposed to be charged are
5 unreasonable or in violation of law, the regulatory authority shall
6 determine the rates to be charged by the utility and shall fix the
7 rates by order served on the utility.

8 (p) A utility may put a changed rate into effect throughout
9 the area in which the utility sought to change its rates, including
10 an area over which the utility commission is exercising appellate
11 or original jurisdiction, by filing a bond with the utility
12 commission if the suspension period has been extended under
13 Subsection (h) and the utility commission fails to make a final
14 determination before the 206th day after the date the rate change
15 would otherwise be effective.

16 (q) The bonded rate may not exceed the proposed rate. The
17 bond must be payable to the utility commission in an amount, in a
18 form, and with a surety approved by the utility commission and
19 conditioned on refund.

20 (r) Unless otherwise agreed to by the parties to the rate
21 proceeding, the utility shall refund or credit against future
22 bills:

23 (1) all sums collected under the bonded rates in
24 excess of the rate finally ordered; and

25 (2) interest on those sums at the current interest
26 rate as determined by the regulatory authority.

27 (s) At any time during the pendency of the rate proceeding

1 the regulatory authority may fix interim rates to remain in effect
2 during the applicable suspension period under Subsection (f) or
3 Subsections (g) and (h) or until a final determination is made on
4 the proposed rate. If the regulatory authority does not establish
5 interim rates, the rates in effect when the application described
6 by Subsection (e) was filed continue in effect during the
7 suspension period.

8 (t) If the regulatory authority sets a final rate that is
9 higher than the interim rate, the utility shall be allowed to
10 collect the difference between the interim rate and final rate
11 unless otherwise agreed to by the parties to the rate proceeding.

12 (u) For good cause shown, the regulatory authority may at
13 any time during the proceeding require the utility to refund money
14 collected under a proposed rate before the rate was suspended or an
15 interim rate was established to the extent the proposed rate
16 exceeds the existing rate or the interim rate.

17 (v) If a regulatory authority other than the utility
18 commission establishes interim rates or bonded rates, the
19 regulatory authority must make a final determination on the rates
20 not later than the first anniversary of the effective date of the
21 interim rates or bonded rates or the rates are automatically
22 approved as requested by the utility.

23 (w) Except to implement a rate adjustment provision
24 approved by the regulatory authority by rule or ordinance, as
25 applicable, or to adjust the rates of a newly acquired utility
26 system, a utility or two or more utilities under common control and
27 ownership may not file a statement of intent to increase its rates

1 more than once in a 12-month period, unless the regulatory
2 authority determines that a financial hardship exists. If the
3 regulatory authority requires the utility to deliver a corrected
4 statement of intent, the utility is not considered to be in
5 violation of the 12-month filing requirement.

6 Sec. 13.1872. CLASS C UTILITIES: RATE ADJUSTMENT.

7 (a) This section applies only to a Class C utility.

8 (b) For purposes of this section, "price index" means an
9 appropriate price index designated annually by the utility
10 commission for the purposes of this section.

11 (c) A utility may not make changes in its rates except by:

12 (1) filing an application for a rate adjustment under
13 the procedures described by Subsection (e) and sending by mail, or
14 by e-mail if the ratepayer has agreed to receive communications
15 electronically, a notice to each ratepayer describing the proposed
16 rate adjustment at least 30 days before the effective date of the
17 proposed change; or

18 (2) complying with the procedures to change rates
19 described by Section 13.1871.

20 (d) The utility shall mail, send by e-mail, or deliver a
21 copy of the application to the appropriate offices of each affected
22 municipality and to any other affected persons as required by the
23 regulatory authority's rules.

24 (e) The utility commission by rule shall adopt procedures to
25 allow a utility to receive without a hearing an annual rate
26 adjustment based on changes in the price index. The rules must:

27 (1) include standard language to be included in the

1 notice described by Subsection (c)(1) describing the rate
2 adjustment process; and

3 (2) provide that an annual rate adjustment described
4 by this section may not result in a rate increase to any class or
5 category of ratepayer of more than the lesser of:

6 (A) five percent; or

7 (B) the percentage increase in the price index
8 between the year preceding the year in which the utility requests
9 the adjustment and the year in which the utility requests the
10 adjustment.

11 (f) A utility may adjust the utility's rates using the
12 procedures adopted under Subsection (e) not more than once each
13 year and not more than four times between rate proceedings
14 described by Section 13.1871.

15 SECTION 41. Section 13.188, Water Code, is amended to read
16 as follows:

17 Sec. 13.188. ADJUSTMENT FOR CHANGE IN ENERGY COSTS. (a)
18 Notwithstanding any other provision in this chapter, the utility
19 commission by rule shall adopt a procedure allowing a utility to
20 file with the utility commission an application to timely adjust
21 the utility's rates to reflect an increase or decrease in
22 documented energy costs in a pass through clause. The utility
23 commission, by rule, shall require the pass through of documented
24 decreases in energy costs within a reasonable time. The pass
25 through, whether a decrease or increase, shall be implemented on no
26 later than an annual basis, unless the utility commission
27 determines a special circumstance applies.

1 (b) Notwithstanding any other provision to the contrary,
2 this adjustment is an uncontested matter not subject to a contested
3 case hearing. However, the utility commission [~~executive director~~]
4 shall hold an uncontested public meeting:

5 (1) on the request of a member of the legislature who
6 represents the area served by the water and sewer utility; or

7 (2) if the utility commission [~~executive director~~]
8 determines that there is substantial public interest in the matter.

9 (c) A proceeding under this section is not a rate case and
10 Sections [~~Section~~] 13.187, 13.1871, and 13.1872 do [~~does~~] not
11 apply.

12 SECTION 42. Subsections (a), (d), and (e), Section 13.241,
13 Water Code, are amended to read as follows:

14 (a) In determining whether to grant or amend a certificate
15 of public convenience and necessity, the utility commission shall
16 ensure that the applicant possesses the financial, managerial, and
17 technical capability to provide continuous and adequate service.

18 (d) Before the utility commission grants a new certificate
19 of convenience and necessity for an area which would require
20 construction of a physically separate water or sewer system, the
21 applicant must demonstrate to the utility commission that
22 regionalization or consolidation with another retail public
23 utility is not economically feasible.

24 (e) The utility commission by rule shall develop a
25 standardized method for determining under Section 13.246(f) which
26 of two or more retail public utilities or water supply or sewer
27 service corporations that apply for a certificate of public

1 convenience and necessity to provide water or sewer utility service
2 to an uncertificated area located in an economically distressed
3 area is more capable financially, managerially, and technically of
4 providing continuous and adequate service. In this subsection,
5 "economically distressed area" has the meaning assigned by Section
6 15.001.

7 SECTION 43. Subsections (a) and (c), Section 13.242, Water
8 Code, are amended to read as follows:

9 (a) Unless otherwise specified, a utility, a utility
10 operated by an affected county, or a water supply or sewer service
11 corporation may not in any way render retail water or sewer utility
12 service directly or indirectly to the public without first having
13 obtained from the utility commission a certificate that the present
14 or future public convenience and necessity will require that
15 installation, operation, or extension, and except as otherwise
16 provided by this subchapter, a retail public utility may not
17 furnish, make available, render, or extend retail water or sewer
18 utility service to any area to which retail water or sewer utility
19 service is being lawfully furnished by another retail public
20 utility without first having obtained a certificate of public
21 convenience and necessity that includes the area in which the
22 consuming facility is located.

23 (c) The utility commission may by rule allow a municipality
24 or utility or water supply corporation to render retail water
25 service without a certificate of public convenience and necessity
26 if the municipality has given notice under Section 13.255 [~~of this~~
27 ~~code~~] that it intends to provide retail water service to an area or

1 if the utility or water supply corporation has less than 15
2 potential connections and is not within the certificated area of
3 another retail public utility.

4 SECTION 44. Section 13.244, Water Code, is amended to read
5 as follows:

6 Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION;
7 EVIDENCE AND CONSENT. (a) To obtain a certificate of public
8 convenience and necessity or an amendment to a certificate, a
9 public utility or water supply or sewer service corporation shall
10 submit to the utility commission an application for a certificate
11 or for an amendment as provided by this section.

12 (b) Each public utility and water supply or sewer service
13 corporation shall file with the utility commission a map or maps
14 showing all its facilities and illustrating separately facilities
15 for production, transmission, and distribution of its services, and
16 each certificated retail public utility shall file with the utility
17 commission a map or maps showing any facilities, customers, or area
18 currently being served outside its certificated areas.

19 (c) Each applicant for a certificate or for an amendment
20 shall file with the utility commission evidence required by the
21 utility commission to show that the applicant has received the
22 required consent, franchise, or permit of the proper municipality
23 or other public authority.

24 (d) An application for a certificate of public convenience
25 and necessity or for an amendment to a certificate must contain:

26 (1) a description of the proposed service area by:

27 (A) a metes and bounds survey certified by a

1 licensed state land surveyor or a registered professional land
2 surveyor;

3 (B) the Texas State Plane Coordinate System;

4 (C) verifiable landmarks, including a road,
5 creek, or railroad line; or

6 (D) if a recorded plat of the area exists, lot and
7 block number;

8 (2) a description of any requests for service in the
9 proposed service area;

10 (3) a capital improvements plan, including a budget
11 and estimated timeline for construction of all facilities necessary
12 to provide full service to the entire proposed service area;

13 (4) a description of the sources of funding for all
14 facilities;

15 (5) to the extent known, a description of current and
16 projected land uses, including densities;

17 (6) a current financial statement of the applicant;

18 (7) according to the tax roll of the central appraisal
19 district for each county in which the proposed service area is
20 located, a list of the owners of each tract of land that is:

21 (A) at least 50 acres; and

22 (B) wholly or partially located within the
23 proposed service area; and

24 (8) any other item required by the utility commission.

25 SECTION 45. Subsections (b), (c), (c-1), (c-2), (c-3), and
26 (e), Section 13.245, Water Code, are amended to read as follows:

27 (b) Except as provided by Subsections (c), (c-1), and (c-2),

1 the utility commission may not grant to a retail public utility a
2 certificate of public convenience and necessity for a service area
3 within the boundaries or extraterritorial jurisdiction of a
4 municipality without the consent of the municipality. The
5 municipality may not unreasonably withhold the consent. As a
6 condition of the consent, a municipality may require that all water
7 and sewer facilities be designed and constructed in accordance with
8 the municipality's standards for facilities.

9 (c) If a municipality has not consented under Subsection (b)
10 before the 180th day after the date the municipality receives the
11 retail public utility's application, the utility commission shall
12 grant the certificate of public convenience and necessity without
13 the consent of the municipality if the utility commission finds
14 that the municipality:

- 15 (1) does not have the ability to provide service; or
16 (2) has failed to make a good faith effort to provide
17 service on reasonable terms and conditions.

18 (c-1) If a municipality has not consented under Subsection
19 (b) before the 180th day after the date a landowner or a retail
20 public utility submits to the municipality a formal request for
21 service according to the municipality's application requirements
22 and standards for facilities on the same or substantially similar
23 terms as provided by the retail public utility's application to the
24 utility commission, including a capital improvements plan required
25 by Section 13.244(d)(3) or a subdivision plat, the utility
26 commission may grant the certificate of public convenience and
27 necessity without the consent of the municipality if:

1 (1) the utility commission makes the findings required
2 by Subsection (c);

3 (2) the municipality has not entered into a binding
4 commitment to serve the area that is the subject of the retail
5 public utility's application to the utility commission before the
6 180th day after the date the formal request was made; and

7 (3) the landowner or retail public utility that
8 submitted the formal request has not unreasonably refused to:

9 (A) comply with the municipality's service
10 extension and development process; or

11 (B) enter into a contract for water or sewer
12 services with the municipality.

13 (c-2) If a municipality refuses to provide service in the
14 proposed service area, as evidenced by a formal vote of the
15 municipality's governing body or an official notification from the
16 municipality, the utility commission is not required to make the
17 findings otherwise required by this section and may grant the
18 certificate of public convenience and necessity to the retail
19 public utility at any time after the date of the formal vote or
20 receipt of the official notification.

21 (c-3) The utility commission must include as a condition of
22 a certificate of public convenience and necessity granted under
23 Subsection (c-1) or (c-2) that all water and sewer facilities be
24 designed and constructed in accordance with the municipality's
25 standards for water and sewer facilities.

26 (e) If the utility commission makes a decision under
27 Subsection (d) regarding the grant of a certificate of public

1 convenience and necessity without the consent of the municipality,
2 the municipality or the retail public utility may appeal the
3 decision to the appropriate state district court. The court shall
4 hear the petition within 120 days after the date the petition is
5 filed. On final disposition, the court may award reasonable fees to
6 the prevailing party.

7 SECTION 46. Subsections (b) and (c), Section 13.2451, Water
8 Code, are amended to read as follows:

9 (b) The utility commission may not extend a municipality's
10 certificate of public convenience and necessity beyond its
11 extraterritorial jurisdiction if an owner of land that is located
12 wholly or partly outside the extraterritorial jurisdiction elects
13 to exclude some or all of the landowner's property within a proposed
14 service area in accordance with Section 13.246(h). This subsection
15 does not apply to a transfer of a certificate as approved by the
16 utility commission.

17 (c) The utility commission, after notice to the
18 municipality and an opportunity for a hearing, may decertify an
19 area outside a municipality's extraterritorial jurisdiction if the
20 municipality does not provide service to the area on or before the
21 fifth anniversary of the date the certificate of public convenience
22 and necessity was granted for the area. This subsection does not
23 apply to a certificate of public convenience and necessity for an
24 area:

25 (1) that was transferred to a municipality on approval
26 of the utility commission; and

27 (2) in relation to which the municipality has spent

1 public funds.

2 SECTION 47. Section 13.246, Water Code, is amended to read
3 as follows:

4 Sec. 13.246. NOTICE AND HEARING; ISSUANCE OR REFUSAL;
5 FACTORS CONSIDERED. (a) If an application for a certificate of
6 public convenience and necessity or for an amendment to a
7 certificate is filed, the utility commission shall cause notice of
8 the application to be given to affected parties and to each county
9 and groundwater conservation district that is wholly or partly
10 included in the area proposed to be certified. If requested, the
11 utility commission shall fix a time and place for a hearing and give
12 notice of the hearing. Any person affected by the application may
13 intervene at the hearing.

14 (a-1) Except as otherwise provided by this subsection, in
15 addition to the notice required by Subsection (a), the utility
16 commission shall require notice to be mailed to each owner of a
17 tract of land that is at least 25 acres and is wholly or partially
18 included in the area proposed to be certified. Notice required
19 under this subsection must be mailed by first class mail to the
20 owner of the tract according to the most current tax appraisal rolls
21 of the applicable central appraisal district at the time the
22 utility commission received the application for the certificate or
23 amendment. Good faith efforts to comply with the requirements of
24 this subsection shall be considered adequate notice to landowners.
25 Notice under this subsection is not required for a matter filed with
26 the utility commission or the commission under:

27 (1) Section 13.248 or 13.255; or

1 (2) Chapter 65.

2 (b) The utility commission may grant applications and issue
3 certificates and amendments to certificates only if the utility
4 commission finds that a certificate or amendment is necessary for
5 the service, accommodation, convenience, or safety of the public.
6 The utility commission may issue a certificate or amendment as
7 requested, or refuse to issue it, or issue it for the construction
8 of only a portion of the contemplated system or facility or
9 extension, or for the partial exercise only of the right or
10 privilege and may impose special conditions necessary to ensure
11 that continuous and adequate service is provided.

12 (c) Certificates of public convenience and necessity and
13 amendments to certificates shall be granted by the utility
14 commission on a nondiscriminatory basis after consideration by the
15 utility commission of:

16 (1) the adequacy of service currently provided to the
17 requested area;

18 (2) the need for additional service in the requested
19 area, including whether any landowners, prospective landowners,
20 tenants, or residents have requested service;

21 (3) the effect of the granting of a certificate or of
22 an amendment on the recipient of the certificate or amendment, on
23 the landowners in the area, and on any retail public utility of the
24 same kind already serving the proximate area;

25 (4) the ability of the applicant to provide adequate
26 service, including meeting the standards of the commission, taking
27 into consideration the current and projected density and land use

1 of the area;

2 (5) the feasibility of obtaining service from an
3 adjacent retail public utility;

4 (6) the financial ability of the applicant to pay for
5 the facilities necessary to provide continuous and adequate service
6 and the financial stability of the applicant, including, if
7 applicable, the adequacy of the applicant's debt-equity ratio;

8 (7) environmental integrity;

9 (8) the probable improvement of service or lowering of
10 cost to consumers in that area resulting from the granting of the
11 certificate or amendment; and

12 (9) the effect on the land to be included in the
13 certificated area.

14 (d) The utility commission may require an applicant for a
15 certificate or for an amendment to provide a bond or other financial
16 assurance in a form and amount specified by the utility commission
17 to ensure that continuous and adequate utility service is provided.

18 (e) Where applicable, in addition to the other factors in
19 this section the utility commission shall consider the efforts of
20 the applicant:

21 (1) to extend service to any economically distressed
22 areas located within the service areas certificated to the
23 applicant; and

24 (2) to enforce the rules adopted under Section 16.343.

25 (f) If two or more retail public utilities or water supply
26 or sewer service corporations apply for a certificate of public
27 convenience and necessity to provide water or sewer utility service

1 to an uncertificated area located in an economically distressed
2 area and otherwise meet the requirements for obtaining a new
3 certificate, the utility commission shall grant the certificate to
4 the retail public utility or water supply or sewer service
5 corporation that is more capable financially, managerially, and
6 technically of providing continuous and adequate service.

7 (g) In this section, "economically distressed area" has the
8 meaning assigned by Section 15.001.

9 (h) Except as provided by Subsection (i), a landowner who
10 owns a tract of land that is at least 25 acres and that is wholly or
11 partially located within the proposed service area may elect to
12 exclude some or all of the landowner's property from the proposed
13 service area by providing written notice to the utility commission
14 before the 30th day after the date the landowner receives notice of
15 a new application for a certificate of public convenience and
16 necessity or for an amendment to an existing certificate of public
17 convenience and necessity. The landowner's election is effective
18 without a further hearing or other process by the utility
19 commission. If a landowner makes an election under this
20 subsection, the application shall be modified so that the electing
21 landowner's property is not included in the proposed service area.
22 An applicant for a certificate of public convenience and necessity
23 that has land removed from its proposed certificated service area
24 because of a landowner's election under this subsection may not be
25 required to provide service to the removed land for any reason,
26 including the violation of law or utility commission or commission
27 rules by the water or sewer system of another person.

1 (i) A landowner is not entitled to make an election under
2 Subsection (h) but is entitled to contest the inclusion of the
3 landowner's property in the proposed service area at a hearing held
4 by the utility commission regarding the application if the proposed
5 service area is located within the boundaries or extraterritorial
6 jurisdiction of a municipality with a population of more than
7 500,000 and the municipality or a utility owned by the municipality
8 is the applicant.

9 SECTION 48. Subsection (a), Section 13.247, Water Code, is
10 amended to read as follows:

11 (a) If an area is within the boundaries of a municipality,
12 all retail public utilities certified or entitled to certification
13 under this chapter to provide service or operate facilities in that
14 area may continue and extend service in its area of public
15 convenience and necessity within the area pursuant to the rights
16 granted by its certificate and this chapter, unless the
17 municipality exercises its power of eminent domain to acquire the
18 property of the retail public utility under Subsection (d). Except
19 as provided by Section 13.255, a municipally owned or operated
20 utility may not provide retail water and sewer utility service
21 within the area certificated to another retail public utility
22 without first having obtained from the utility commission a
23 certificate of public convenience and necessity that includes the
24 areas to be served.

25 SECTION 49. Section 13.248, Water Code, is amended to read
26 as follows:

27 Sec. 13.248. CONTRACTS VALID AND ENFORCEABLE. Contracts

1 between retail public utilities designating areas to be served and
2 customers to be served by those retail public utilities, when
3 approved by the utility commission after public notice and hearing,
4 are valid and enforceable and are incorporated into the appropriate
5 areas of public convenience and necessity.

6 SECTION 50. Subsections (b), (c), and (e), Section 13.250,
7 Water Code, are amended to read as follows:

8 (b) Unless the utility commission issues a certificate that
9 neither the present nor future convenience and necessity will be
10 adversely affected, the holder of a certificate or a person who
11 possesses facilities used to provide utility service shall not
12 discontinue, reduce, or impair service to a certified service area
13 or part of a certified service area except for:

14 (1) nonpayment of charges for services provided by the
15 certificate holder or a person who possesses facilities used to
16 provide utility service;

17 (2) nonpayment of charges for sewer service provided
18 by another retail public utility under an agreement between the
19 retail public utility and the certificate holder or a person who
20 possesses facilities used to provide utility service or under a
21 utility commission-ordered arrangement between the two service
22 providers;

23 (3) nonuse; or

24 (4) other similar reasons in the usual course of
25 business.

26 (c) Any discontinuance, reduction, or impairment of
27 service, whether with or without approval of the utility

1 commission, shall be in conformity with and subject to conditions,
2 restrictions, and limitations that the utility commission
3 prescribes.

4 (e) Not later than the 48th hour after the hour in which a
5 utility files a bankruptcy petition, the utility shall report this
6 fact to the utility commission and the commission in writing.

7 SECTION 51. Subsection (d), Section 13.2502, Water Code, is
8 amended to read as follows:

9 (d) This section does not limit or extend the jurisdiction
10 of the utility commission under Section 13.043(g).

11 SECTION 52. Section 13.251, Water Code, is amended to read
12 as follows:

13 Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.
14 Except as provided by Section 13.255 [~~of this code~~], a utility or a
15 water supply or sewer service corporation may not sell, assign, or
16 lease a certificate of public convenience and necessity or any
17 right obtained under a certificate unless the utility commission
18 has determined that the purchaser, assignee, or lessee is capable
19 of rendering adequate and continuous service to every consumer
20 within the certified area, after considering the factors under
21 Section 13.246(c) [~~of this code~~]. The sale, assignment, or lease
22 shall be on the conditions prescribed by the utility commission.

23 SECTION 53. Section 13.252, Water Code, is amended to read
24 as follows:

25 Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY.
26 If a retail public utility in constructing or extending a line,
27 plant, or system interferes or attempts to interfere with the

1 operation of a line, plant, or system of any other retail public
2 utility, or furnishes, makes available, renders, or extends retail
3 water or sewer utility service to any portion of the service area of
4 another retail public utility that has been granted or is not
5 required to possess a certificate of public convenience and
6 necessity, the utility commission may issue an order prohibiting
7 the construction, extension, or provision of service or prescribing
8 terms and conditions for locating the line, plant, or system
9 affected or for the provision of the service.

10 SECTION 54. Section 13.253, Water Code, is amended to read
11 as follows:

12 Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING
13 SERVICE. (a) After notice and hearing, the utility commission or
14 the commission may:

15 (1) order any retail public utility that is required
16 by law to possess a certificate of public convenience and necessity
17 or any retail public utility that possesses a certificate of public
18 convenience and necessity and is located in an affected county as
19 defined in Section 16.341 to:

20 (A) provide specified improvements in its
21 service in a defined area if service in that area is inadequate or
22 is substantially inferior to service in a comparable area and it is
23 reasonable to require the retail public utility to provide the
24 improved service; or

25 (B) develop, implement, and follow financial,
26 managerial, and technical practices that are acceptable to the
27 utility commission to ensure that continuous and adequate service

1 is provided to any areas currently certificated to the retail
2 public utility if the retail public utility has not provided
3 continuous and adequate service to any of those areas and, for a
4 utility, to provide financial assurance of the utility's ability to
5 operate the system in accordance with applicable laws and rules, in
6 the form of a bond or other financial assurance in a form and amount
7 specified by the utility commission;

8 (2) order two or more public utilities or water supply
9 or sewer service corporations to establish specified facilities for
10 interconnecting service;

11 (3) order a public utility or water supply or sewer
12 service corporation that has not demonstrated that it can provide
13 continuous and adequate service from its drinking water source or
14 sewer treatment facility to obtain service sufficient to meet its
15 obligation to provide continuous and adequate service on at least a
16 wholesale basis from another consenting utility service provider;
17 or

18 (4) issue an emergency order, with or without a
19 hearing, under Section 13.041.

20 (b) If the utility commission has reason to believe that
21 improvements and repairs to a water or sewer service system are
22 necessary to enable a retail public utility to provide continuous
23 and adequate service in any portion of its service area and the
24 retail public utility has provided financial assurance under
25 Section 341.0355, Health and Safety Code, or under this chapter,
26 the utility commission, after providing to the retail public
27 utility notice and an opportunity to be heard by the commissioners

1 at a [~~commission~~] meeting of the utility commission, may
2 immediately order specified improvements and repairs to the water
3 or sewer system, the costs of which may be paid by the bond or other
4 financial assurance in an amount determined by the utility
5 commission not to exceed the amount of the bond or financial
6 assurance. The order requiring the improvements may be an
7 emergency order if it is issued after the retail public utility has
8 had an opportunity to be heard [~~by the commissioners~~] at a
9 [~~commission~~] meeting of the utility commission. After notice and
10 hearing, the utility commission may require a retail public utility
11 to obligate additional money to replace the financial assurance
12 used for the improvements.

13 SECTION 55. Subsections (a), (a-1), (a-2), (a-3), (a-4),
14 (a-6), (a-8), (b), (c), (d), (e), (f), (g), (g-1), and (h), Section
15 13.254, Water Code, are amended to read as follows:

16 (a) The utility commission at any time after notice and
17 hearing may revoke or amend any certificate of public convenience
18 and necessity with the written consent of the certificate holder or
19 if the utility commission [~~it~~] finds that:

20 (1) the certificate holder has never provided, is no
21 longer providing, is incapable of providing, or has failed to
22 provide continuous and adequate service in the area, or part of the
23 area, covered by the certificate;

24 (2) in an affected county as defined in Section
25 16.341, the cost of providing service by the certificate holder is
26 so prohibitively expensive as to constitute denial of service,
27 provided that, for commercial developments or for residential

1 developments started after September 1, 1997, in an affected county
2 as defined in Section 16.341, the fact that the cost of obtaining
3 service from the currently certificated retail public utility makes
4 the development economically unfeasible does not render such cost
5 prohibitively expensive in the absence of other relevant factors;

6 (3) the certificate holder has agreed in writing to
7 allow another retail public utility to provide service within its
8 service area, except for an interim period, without amending its
9 certificate; or

10 (4) the certificate holder has failed to file a cease
11 and desist action pursuant to Section 13.252 within 180 days of the
12 date that it became aware that another retail public utility was
13 providing service within its service area, unless the certificate
14 holder demonstrates good cause for its failure to file such action
15 within the 180 days.

16 (a-1) As an alternative to decertification under Subsection
17 (a), the owner of a tract of land that is at least 50 acres and that
18 is not in a platted subdivision actually receiving water or sewer
19 service may petition the utility commission under this subsection
20 for expedited release of the area from a certificate of public
21 convenience and necessity so that the area may receive service from
22 another retail public utility. The fact that a certificate holder
23 is a borrower under a federal loan program is not a bar to a request
24 under this subsection for the release of the petitioner's land and
25 the receipt of services from an alternative provider. On the day
26 the petitioner submits the petition to the utility commission, the
27 petitioner shall send, via certified mail, a copy of the petition to

1 the certificate holder, who may submit information to the utility
2 commission to controvert information submitted by the petitioner.
3 The petitioner must demonstrate that:

4 (1) a written request for service, other than a
5 request for standard residential or commercial service, has been
6 submitted to the certificate holder, identifying:

7 (A) the area for which service is sought;

8 (B) the timeframe within which service is needed
9 for current and projected service demands in the area;

10 (C) the level and manner of service needed for
11 current and projected service demands in the area;

12 (D) the approximate cost for the alternative
13 provider to provide the service at the same level and manner that is
14 requested from the certificate holder;

15 (E) the flow and pressure requirements and
16 specific infrastructure needs, including line size and system
17 capacity for the required level of fire protection requested; and

18 (F) any additional information requested by the
19 certificate holder that is reasonably related to determination of
20 the capacity or cost for providing the service;

21 (2) the certificate holder has been allowed at least
22 90 calendar days to review and respond to the written request and
23 the information it contains;

24 (3) the certificate holder:

25 (A) has refused to provide the service;

26 (B) is not capable of providing the service on a
27 continuous and adequate basis within the timeframe, at the level,

1 at the approximate cost that the alternative provider is capable of
2 providing for a comparable level of service, or in the manner
3 reasonably needed or requested by current and projected service
4 demands in the area; or

5 (C) conditions the provision of service on the
6 payment of costs not properly allocable directly to the
7 petitioner's service request, as determined by the utility
8 commission; and

9 (4) the alternate retail public utility from which the
10 petitioner will be requesting service possesses the financial,
11 managerial, and technical capability to provide continuous and
12 adequate service within the timeframe, at the level, at the cost,
13 and in the manner reasonably needed or requested by current and
14 projected service demands in the area.

15 (a-2) A landowner is not entitled to make the election
16 described in Subsection (a-1) or (a-5) but is entitled to contest
17 under Subsection (a) the involuntary certification of its property
18 in a hearing held by the utility commission if the landowner's
19 property is located:

20 (1) within the boundaries of any municipality or the
21 extraterritorial jurisdiction of a municipality with a population
22 of more than 500,000 and the municipality or retail public utility
23 owned by the municipality is the holder of the certificate; or

24 (2) in a platted subdivision actually receiving water
25 or sewer service.

26 (a-3) Within 60 calendar days from the date the utility
27 commission determines the petition filed pursuant to Subsection

1 (a-1) to be administratively complete, the utility commission shall
 2 grant the petition unless the utility commission makes an express
 3 finding that the petitioner failed to satisfy the elements required
 4 in Subsection (a-1) and supports its finding with separate findings
 5 and conclusions for each element based solely on the information
 6 provided by the petitioner and the certificate holder. The utility
 7 commission may grant or deny a petition subject to terms and
 8 conditions specifically related to the service request of the
 9 petitioner and all relevant information submitted by the petitioner
 10 and the certificate holder. In addition, the utility commission
 11 may require an award of compensation as otherwise provided by this
 12 section.

13 (a-4) Chapter 2001, Government Code, does not apply to any
 14 petition filed under Subsection (a-1). The decision of the utility
 15 commission on the petition is final after any reconsideration
 16 authorized by the utility commission's rules and may not be
 17 appealed.

18 (a-6) The utility commission shall grant a petition
 19 received under Subsection (a-5) not later than the 60th day after
 20 the date the landowner files the petition. The utility commission
 21 may not deny a petition received under Subsection (a-5) based on the
 22 fact that a certificate holder is a borrower under a federal loan
 23 program. The utility commission may require an award of
 24 compensation by the petitioner to a decertified retail public
 25 utility that is the subject of a petition filed under Subsection
 26 (a-5) as otherwise provided by this section.

27 (a-8) If a certificate holder has never made service

1 available through planning, design, construction of facilities, or
 2 contractual obligations to serve the area a petitioner seeks to
 3 have released under Subsection (a-1), the utility commission is not
 4 required to find that the proposed alternative provider is capable
 5 of providing better service than the certificate holder, but only
 6 that the proposed alternative provider is capable of providing the
 7 requested service.

8 (b) Upon written request from the certificate holder, the
 9 utility commission [~~executive director~~] may cancel the certificate
 10 of a utility or water supply corporation authorized by rule to
 11 operate without a certificate of public convenience and necessity
 12 under Section 13.242(c).

13 (c) If the certificate of any retail public utility is
 14 revoked or amended, the utility commission may require one or more
 15 retail public utilities with their consent to provide service in
 16 the area in question. The order of the utility commission shall not
 17 be effective to transfer property.

18 (d) A retail public utility may not in any way render retail
 19 water or sewer service directly or indirectly to the public in an
 20 area that has been decertified under this section without providing
 21 compensation for any property that the utility commission
 22 determines is rendered useless or valueless to the decertified
 23 retail public utility as a result of the decertification.

24 (e) The determination of the monetary amount of
 25 compensation, if any, shall be determined at the time another
 26 retail public utility seeks to provide service in the previously
 27 decertified area and before service is actually provided. The

1 utility commission shall ensure that the monetary amount of
2 compensation is determined not later than the 90th calendar day
3 after the date on which a retail public utility notifies the utility
4 commission of its intent to provide service to the decertified
5 area.

6 (f) The monetary amount shall be determined by a qualified
7 individual or firm serving as independent appraiser agreed upon by
8 the decertified retail public utility and the retail public utility
9 seeking to serve the area. The determination of compensation by the
10 independent appraiser shall be binding on the utility commission.
11 The costs of the independent appraiser shall be borne by the retail
12 public utility seeking to serve the area.

13 (g) For the purpose of implementing this section, the value
14 of real property owned and utilized by the retail public utility for
15 its facilities shall be determined according to the standards set
16 forth in Chapter 21, Property Code, governing actions in eminent
17 domain and the value of personal property shall be determined
18 according to the factors in this subsection. The factors ensuring
19 that the compensation to a retail public utility is just and
20 adequate shall include: the amount of the retail public utility's
21 debt allocable for service to the area in question; the value of the
22 service facilities of the retail public utility located within the
23 area in question; the amount of any expenditures for planning,
24 design, or construction of service facilities that are allocable to
25 service to the area in question; the amount of the retail public
26 utility's contractual obligations allocable to the area in
27 question; any demonstrated impairment of service or increase of

cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors. The utility commission shall adopt rules governing the evaluation of these factors.

(g-1) If the retail public utilities cannot agree on an independent appraiser within 10 calendar days after the date on which the retail public utility notifies the utility commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the utility commission within 60 calendar days. After receiving the appraisals, the utility commission shall appoint a third appraiser who shall make a determination of the compensation within 30 days. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay half the cost of the third appraisal.

(h) A certificate holder that has land removed from its certificated service area in accordance with this section may not be required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or utility commission or commission rules by a water or sewer system of another person.

SECTION 56. Subsections (a), (b), (c), (d), (e), (g-1), (k), (l), and (m), Section 13.255, Water Code, are amended to read as follows:

1 (a) In the event that an area is incorporated or annexed by a
2 municipality, either before or after the effective date of this
3 section, the municipality and a retail public utility that provides
4 water or sewer service to all or part of the area pursuant to a
5 certificate of convenience and necessity may agree in writing that
6 all or part of the area may be served by a municipally owned
7 utility, by a franchised utility, or by the retail public utility.
8 In this section, the phrase "franchised utility" shall mean a
9 retail public utility that has been granted a franchise by a
10 municipality to provide water or sewer service inside municipal
11 boundaries. The agreement may provide for single or dual
12 certification of all or part of the area, for the purchase of
13 facilities or property, and for such other or additional terms that
14 the parties may agree on. If a franchised utility is to serve the
15 area, the franchised utility shall also be a party to the agreement.
16 The executed agreement shall be filed with the utility commission,
17 and the utility commission, on receipt of the agreement, shall
18 incorporate the terms of the agreement into the respective
19 certificates of convenience and necessity of the parties to the
20 agreement.

21 (b) If an agreement is not executed within 180 days after
22 the municipality, in writing, notifies the retail public utility of
23 its intent to provide service to the incorporated or annexed area,
24 and if the municipality desires and intends to provide retail
25 utility service to the area, the municipality, prior to providing
26 service to the area, shall file an application with the utility
27 commission to grant single certification to the municipally owned

1 water or sewer utility or to a franchised utility. If an
2 application for single certification is filed, the utility
3 commission shall fix a time and place for a hearing and give notice
4 of the hearing to the municipality and franchised utility, if any,
5 and notice of the application and hearing to the retail public
6 utility.

7 (c) The utility commission shall grant single certification
8 to the municipality. The utility commission shall also determine
9 whether single certification as requested by the municipality would
10 result in property of a retail public utility being rendered
11 useless or valueless to the retail public utility, and shall
12 determine in its order the monetary amount that is adequate and just
13 to compensate the retail public utility for such property. If the
14 municipality in its application has requested the transfer of
15 specified property of the retail public utility to the municipality
16 or to a franchised utility, the utility commission shall also
17 determine in its order the adequate and just compensation to be paid
18 for such property pursuant to the provisions of this section,
19 including an award for damages to property remaining in the
20 ownership of the retail public utility after single certification.
21 The order of the utility commission shall not be effective to
22 transfer property. A transfer of property may only be obtained
23 under this section by a court judgment rendered pursuant to
24 Subsection (d) or (e) [~~of this section~~]. The grant of single
25 certification by the utility commission shall go into effect on the
26 date the municipality or franchised utility, as the case may be,
27 pays adequate and just compensation pursuant to court order, or

1 pays an amount into the registry of the court or to the retail
 2 public utility under Subsection (f). If the court judgment
 3 provides that the retail public utility is not entitled to any
 4 compensation, the grant of single certification shall go into
 5 effect when the court judgment becomes final. The municipality or
 6 franchised utility must provide to each customer of the retail
 7 public utility being acquired an individual written notice within
 8 60 days after the effective date for the transfer specified in the
 9 court judgment. The notice must clearly advise the customer of the
 10 identity of the new service provider, the reason for the transfer,
 11 the rates to be charged by the new service provider, and the
 12 effective date of those rates.

13 (d) In the event the final order of the utility commission
 14 is not appealed within 30 days, the municipality may request the
 15 district court of Travis County to enter a judgment consistent with
 16 the order of the utility commission. In such event, the court shall
 17 render a judgment that:

18 (1) transfers to the municipally owned utility or
 19 franchised utility title to property to be transferred to the
 20 municipally owned utility or franchised utility as delineated by
 21 the utility commission's final order and property determined by the
 22 utility commission to be rendered useless or valueless by the
 23 granting of single certification; and

24 (2) orders payment to the retail public utility of
 25 adequate and just compensation for the property as determined by
 26 the utility commission in its final order.

27 (e) Any party that is aggrieved by a final order of the

1 utility commission under this section may file an appeal with the
2 district court of Travis County within 30 days after the order
3 becomes final. The hearing in such an appeal before the district
4 court shall be by trial de novo on all issues. After the hearing, if
5 the court determines that the municipally owned utility or
6 franchised utility is entitled to single certification under the
7 provisions of this section, the court shall enter a judgment that:

8 (1) transfers to the municipally owned utility or
9 franchised utility title to property requested by the municipality
10 to be transferred to the municipally owned utility or franchised
11 utility and located within the singly certificated area and
12 property determined by the court or jury to be rendered useless or
13 valueless by the granting of single certification; and

14 (2) orders payment in accordance with Subsection (g)
15 ~~[of this section]~~ to the retail public utility of adequate and just
16 compensation for the property transferred and for the property
17 damaged as determined by the court or jury.

18 (g-1) The utility commission shall adopt rules governing
19 the evaluation of the factors to be considered in determining the
20 monetary compensation under Subsection (g). The utility commission
21 by rule shall adopt procedures to ensure that the total
22 compensation to be paid to a retail public utility under Subsection
23 (g) is determined not later than the 90th calendar day after the
24 date on which the utility commission determines that the
25 municipality's application is administratively complete.

26 (k) The following conditions apply when a municipality or
27 franchised utility makes an application to acquire the service area

1 or facilities of a retail public utility described in Subsection
2 (j)(2):

3 (1) the utility commission or court must determine
4 that the service provided by the retail public utility is
5 substandard or its rates are unreasonable in view of the reasonable
6 expenses of the utility;

7 (2) if the municipality abandons its application, the
8 court or the utility commission is authorized to award to the retail
9 public utility its reasonable expenses related to the proceeding
10 hereunder, including attorney fees; and

11 (3) unless otherwise agreed by the retail public
12 utility, the municipality must take the entire utility property of
13 the retail public utility in a proceeding hereunder.

14 (1) For an area incorporated by a municipality, the
15 compensation provided under Subsection (g) shall be determined by a
16 qualified individual or firm to serve as independent appraiser, who
17 shall be selected by the affected retail public utility, and the
18 costs of the appraiser shall be paid by the municipality. For an
19 area annexed by a municipality, the compensation provided under
20 Subsection (g) shall be determined by a qualified individual or
21 firm to which the municipality and the retail public utility agree
22 to serve as independent appraiser. If the retail public utility and
23 the municipality are unable to agree on a single individual or firm
24 to serve as the independent appraiser before the 11th day after the
25 date the retail public utility or municipality notifies the other
26 party of the impasse, the retail public utility and municipality
27 each shall appoint a qualified individual or firm to serve as

1 independent appraiser. On or before the 10th business day after the
2 date of their appointment, the independent appraisers shall meet to
3 reach an agreed determination of the amount of compensation. If the
4 appraisers are unable to agree on a determination before the 16th
5 business day after the date of their first meeting under this
6 subsection, the retail public utility or municipality may petition
7 the utility commission or a person the utility commission
8 designates for the purpose to appoint a third qualified independent
9 appraiser to reconcile the appraisals of the two originally
10 appointed appraisers. The determination of the third appraiser may
11 not be less than the lesser or more than the greater of the two
12 original appraisals. The costs of the independent appraisers for
13 an annexed area shall be shared equally by the retail public utility
14 and the municipality. The determination of compensation under this
15 subsection is binding on the utility commission.

16 (m) The utility commission shall deny an application for
17 single certification by a municipality that fails to demonstrate
18 compliance with the commission's minimum requirements for public
19 drinking water systems.

20 SECTION 57. Section 13.2551, Water Code, is amended to read
21 as follows:

22 Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a
23 condition to decertification or single certification under Section
24 13.254 or 13.255, and on request by an affected retail public
25 utility, the utility commission may order:

26 (1) the retail public utility seeking to provide
27 service to a decertified area to serve the entire service area of

1 the retail public utility that is being decertified; and

2 (2) the transfer of the entire certificate of public
3 convenience and necessity of a partially decertified retail public
4 utility to the retail public utility seeking to provide service to
5 the decertified area.

6 (b) The utility commission shall order service to the entire
7 area under Subsection (a) if the utility commission finds that the
8 decertified retail public utility will be unable to provide
9 continuous and adequate service at an affordable cost to the
10 remaining customers.

11 (c) The utility commission shall require the retail public
12 utility seeking to provide service to the decertified area to
13 provide continuous and adequate service to the remaining customers
14 at a cost comparable to the cost of that service to its other
15 customers and shall establish the terms under which the service
16 must be provided. The terms may include:

- 17 (1) transferring debt and other contract obligations;
18 (2) transferring real and personal property;
19 (3) establishing interim service rates for affected
20 customers during specified times; and
21 (4) other provisions necessary for the just and
22 reasonable allocation of assets and liabilities.

23 (d) The retail public utility seeking decertification shall
24 not charge the affected customers any transfer fee or other fee to
25 obtain service other than the retail public utility's usual and
26 customary rates for monthly service or the interim rates set by the
27 utility commission, if applicable.

1 (e) The utility commission shall not order compensation to
2 the decertificated retail utility if service to the entire service
3 area is ordered under this section.

4 SECTION 58. Subsections (e), (i), (r), and (s), Section
5 13.257, Water Code, are amended to read as follows:

6 (e) The notice must be given to the prospective purchaser
7 before the execution of a binding contract of purchase and sale.
8 The notice may be given separately or as an addendum to or paragraph
9 of the contract. If the seller fails to provide the notice required
10 by this section, the purchaser may terminate the contract. If the
11 seller provides the notice at or before the closing of the purchase
12 and sale contract and the purchaser elects to close even though the
13 notice was not timely provided before the execution of the
14 contract, it is conclusively presumed that the purchaser has waived
15 all rights to terminate the contract and recover damages or pursue
16 other remedies or rights under this section. Notwithstanding any
17 provision of this section to the contrary, a seller, title
18 insurance company, real estate broker, or examining attorney, or an
19 agent, representative, or person acting on behalf of the seller,
20 company, broker, or attorney, is not liable for damages under
21 Subsection (m) or (n) or liable for any other damages to any person
22 for:

23 (1) failing to provide the notice required by this
24 section to a purchaser before the execution of a binding contract of
25 purchase and sale or at or before the closing of the purchase and
26 sale contract if:

27 (A) the utility service provider did not file the

1 map of the certificated service area in the real property records of
2 the county in which the service area is located and with the utility
3 commission depicting the boundaries of the service area of the
4 utility service provider as shown in the real property records of
5 the county in which the service area is located; and

6 (B) the utility commission did not maintain an
7 accurate map of the certificated service area of the utility
8 service provider as required by this chapter; or

9 (2) unintentionally providing a notice required by
10 this section that is incorrect under the circumstances before the
11 execution of a binding contract of purchase and sale or at or before
12 the closing of the purchase and sale contract.

13 (i) If the notice is given at closing as provided by
14 Subsection (g), a purchaser, or the purchaser's heirs, successors,
15 or assigns, may not maintain an action for damages or maintain an
16 action against a seller, title insurance company, real estate
17 broker, or lienholder, or any agent, representative, or person
18 acting on behalf of the seller, company, broker, or lienholder, by
19 reason of the seller's use of the information filed with the utility
20 commission by the utility service provider or the seller's use of
21 the map of the certificated service area of the utility service
22 provider filed in the real property records to determine whether
23 the property to be purchased is within the certificated service
24 area of the utility service provider. An action may not be
25 maintained against a title insurance company for the failure to
26 disclose that the described real property is included within the
27 certificated service area of a utility service provider if the

1 utility service provider did not file in the real property records
2 or with the utility commission the map of the certificated service
3 area.

4 (r) A utility service provider shall:

5 (1) record in the real property records of each county
6 in which the service area or a portion of the service area is
7 located a certified copy of the map of the certificate of public
8 convenience and necessity and of any amendment to the certificate
9 as contained in the utility commission's records, and a boundary
10 description of the service area by:

11 (A) a metes and bounds survey certified by a
12 licensed state land surveyor or a registered professional land
13 surveyor;

14 (B) the Texas State Plane Coordinate System;

15 (C) verifiable landmarks, including a road,
16 creek, or railroad line; or

17 (D) if a recorded plat of the area exists, lot and
18 block number; and

19 (2) submit to the utility commission [~~executive~~
20 ~~director~~] evidence of the recording.

21 (s) Each county shall accept and file in its real property
22 records a utility service provider's map presented to the county
23 clerk under this section if the map meets filing requirements, does
24 not exceed 11 inches by 17 inches in size, and is accompanied by the
25 appropriate fee. The recording required by this section must be
26 completed not later than the 31st day after the date a utility
27 service provider receives a final order from the utility commission

1 granting an application for a new certificate or for an amendment to
2 a certificate that results in a change in the utility service
3 provider's service area.

4 SECTION 59. Subsections (a), (b), (c), (d), (e), (f), and
5 (g), Section 13.301, Water Code, are amended to read as follows:

6 (a) A utility or a water supply or sewer service
7 corporation, on or before the 120th day before the effective date of
8 a sale, acquisition, lease, or rental of a water or sewer system
9 that is required by law to possess a certificate of public
10 convenience and necessity or the effective date of a merger or
11 consolidation with such a utility or water supply or sewer service
12 corporation, shall:

13 (1) file a written application with the utility
14 commission; and

15 (2) unless public notice is waived by the utility
16 commission [~~executive director~~] for good cause shown, give public
17 notice of the action.

18 (b) The utility commission may require that the person
19 purchasing or acquiring the water or sewer system demonstrate
20 adequate financial, managerial, and technical capability for
21 providing continuous and adequate service to the requested area and
22 any areas currently certificated to the person.

23 (c) If the person purchasing or acquiring the water or sewer
24 system cannot demonstrate adequate financial capability, the
25 utility commission may require that the person provide a bond or
26 other financial assurance in a form and amount specified by the
27 utility commission to ensure continuous and adequate utility

1 service is provided.

2 (d) The utility commission shall, with or without a public
3 hearing, investigate the sale, acquisition, lease, or rental to
4 determine whether the transaction will serve the public interest.

5 (e) Before the expiration of the 120-day notification
6 period, the utility commission ~~[executive director]~~ shall notify
7 all known parties to the transaction and the Office of Public
8 Utility Counsel whether ~~[of]~~ the utility commission will ~~[executive~~
9 ~~director's decision whether to request that the commission]~~ hold a
10 public hearing to determine if the transaction will serve the
11 public interest. The utility commission may hold ~~[executive~~
12 ~~director may request]~~ a hearing if:

13 (1) the application filed with the utility commission
14 or the public notice was improper;

15 (2) the person purchasing or acquiring the water or
16 sewer system has not demonstrated adequate financial, managerial,
17 and technical capability for providing continuous and adequate
18 service to the service area being acquired and to any areas
19 currently certificated to the person;

20 (3) the person or an affiliated interest of the person
21 purchasing or acquiring the water or sewer system has a history of:

22 (A) noncompliance with the requirements of the
23 utility commission, the commission, or the ~~[Texas]~~ Department of
24 State Health Services; or

25 (B) continuing mismanagement or misuse of
26 revenues as a utility service provider;

27 (4) the person purchasing or acquiring the water or

1 sewer system cannot demonstrate the financial ability to provide
2 the necessary capital investment to ensure the provision of
3 continuous and adequate service to the customers of the water or
4 sewer system; or

5 (5) there are concerns that the transaction may not
6 serve the public interest, after the application of the
7 considerations provided by Section 13.246(c) for determining
8 whether to grant a certificate of convenience and necessity.

9 (f) Unless the utility commission holds ~~[executive director~~
10 ~~requests that]~~ a public hearing ~~[be held]~~, the sale, acquisition,
11 lease, or rental may be completed as proposed:

12 (1) at the end of the 120-day period; or

13 (2) at any time after the utility commission
14 ~~[executive director]~~ notifies the utility or water supply or sewer
15 service corporation that a hearing will not be held ~~[requested]~~.

16 (g) If the utility commission decides to hold a hearing ~~[is~~
17 ~~requested]~~ or if the utility or water supply or sewer service
18 corporation fails to make the application as required or to provide
19 public notice, the sale, acquisition, lease, or rental may not be
20 completed unless the utility commission determines that the
21 proposed transaction serves the public interest.

22 SECTION 60. Section 13.302, Water Code, is amended to read
23 as follows:

24 Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC
25 UTILITY: REPORT. (a) A utility may not purchase voting stock in
26 another utility doing business in this state and a person may not
27 acquire a controlling interest in a utility doing business in this

state unless the person or utility files a written application with the utility commission not later than the 61st day before the date on which the transaction is to occur.

(b) The utility commission may require that a person acquiring a controlling interest in a utility demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the utility commission may require that the person provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure continuous and adequate utility service is provided.

(d) The utility commission ~~[executive director]~~ may ~~[request that the commission]~~ hold a public hearing on the transaction if the utility commission ~~[executive director]~~ believes that a criterion prescribed by Section 13.301(e) applies.

(e) Unless the utility commission holds ~~[executive director requests that]~~ a public hearing ~~[be held]~~, the purchase or acquisition may be completed as proposed:

(1) at the end of the 60-day period; or

(2) at any time after the utility commission ~~[executive director]~~ notifies the person or utility that a hearing will not be held ~~[requested]~~.

(f) If the utility commission decides to hold a hearing ~~[is requested]~~ or if the person or utility fails to make the application to the utility commission as required, the purchase or acquisition

1 may not be completed unless the utility commission determines that
2 the proposed transaction serves the public interest. A purchase or
3 acquisition that is not completed in accordance with the provisions
4 of this section is void.

5 SECTION 61. Section 13.303, Water Code, is amended to read
6 as follows:

7 Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may
8 not loan money, stocks, bonds, notes, or other evidences of
9 indebtedness to any corporation or person owning or holding
10 directly or indirectly any stock of the utility unless the utility
11 reports the transaction to the utility commission within 60 days
12 after the date of the transaction.

13 SECTION 62. Section 13.304, Water Code, is amended to read
14 as follows:

15 Sec. 13.304. FORECLOSURE REPORT. (a) A utility that
16 receives notice that all or a portion of the utility's facilities or
17 property used to provide utility service are being posted for
18 foreclosure shall notify the utility commission and the commission
19 in writing of that fact not later than the 10th day after the date on
20 which the utility receives the notice.

21 (b) A financial institution that forecloses on a utility or
22 on any part of the utility's facilities or property that are used to
23 provide utility service is not required to provide the 120-day
24 notice prescribed by Section 13.301, but shall provide written
25 notice to the utility commission and the commission before the 30th
26 day preceding the date on which the foreclosure is completed.

27 (c) The financial institution may operate the utility for an

1 interim period prescribed by utility commission rule before
2 transferring or otherwise obtaining a certificate of convenience
3 and necessity. A financial institution that operates a utility
4 during an interim period under this subsection is subject to each
5 utility commission rule to which the utility was subject and in the
6 same manner.

7 SECTION 63. Section 13.341, Water Code, is amended to read
8 as follows:

9 Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The
10 utility commission has jurisdiction over affiliated interests
11 having transactions with utilities under the jurisdiction of the
12 utility commission to the extent of access to all accounts and
13 records of those affiliated interests relating to such
14 transactions, including but in no way limited to accounts and
15 records of joint or general expenses, any portion of which may be
16 applicable to those transactions.

17 SECTION 64. Section 13.342, Water Code, is amended to read
18 as follows:

19 Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING
20 SECURITIES. The utility commission may require the disclosure of
21 the identity and respective interests of every owner of any
22 substantial interest in the voting securities of any utility or its
23 affiliated interest. One percent or more is a substantial interest
24 within the meaning of this section.

25 SECTION 65. Subsection (a), Section 13.343, Water Code, is
26 amended to read as follows:

27 (a) The owner of a utility that supplies retail water

1 service may not contract to purchase from an affiliated supplier
2 wholesale water service for any of that owner's systems unless:

3 (1) the wholesale service is provided for not more
4 than 90 days to remedy an emergency condition, as defined by utility
5 commission or commission rule; or

6 (2) the utility commission [~~executive director~~]
7 determines that the utility cannot obtain wholesale water service
8 from another source at a lower cost than from the affiliate.

9 SECTION 66. Section 13.381, Water Code, is amended to read
10 as follows:

11 Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party
12 to a proceeding before the utility commission or the commission is
13 entitled to judicial review under the substantial evidence rule.

14 SECTION 67. Subsection (a), Section 13.382, Water Code, is
15 amended to read as follows:

16 (a) Any party represented by counsel who alleges that
17 existing rates are excessive or that rates prescribed by the
18 utility commission are excessive and who is a prevailing party in
19 proceedings for review of a utility commission order or decision
20 may in the same action recover against the regulation fund
21 reasonable fees for attorneys and expert witnesses and other costs
22 incurred by him before the utility commission and the court. The
23 amount of the attorney's fees shall be fixed by the court.

24 SECTION 68. Section 13.411, Water Code, is amended to read
25 as follows:

26 Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a)
27 If the utility commission or the commission has reason to believe

1 that any retail public utility or any other person or corporation is
 2 engaged in or is about to engage in any act in violation of this
 3 chapter or of any order or rule of the utility commission or the
 4 commission entered or adopted under this chapter or that any retail
 5 public utility or any other person or corporation is failing to
 6 comply with this chapter or with any rule or order, the attorney
 7 general on request of the utility commission or the commission, in
 8 addition to any other remedies provided in this chapter, shall
 9 bring an action in a court of competent jurisdiction in the name of
 10 and on behalf of the utility commission or the commission against
 11 the retail public utility or other person or corporation to enjoin
 12 the commencement or continuation of any act or to require
 13 compliance with this chapter or the rule or order.

14 (b) If the utility commission or the executive director of
 15 the commission has reason to believe that the failure of the owner
 16 or operator of a water utility to properly operate, maintain, or
 17 provide adequate facilities presents an imminent threat to human
 18 health or safety, the utility commission or the executive director
 19 shall immediately:

- 20 (1) notify the utility's representative; and
- 21 (2) initiate enforcement action consistent with:
 - 22 (A) this subchapter; and
 - 23 (B) procedural rules adopted by the utility
 - 24 commission or the commission.

25 SECTION 69. Section 13.4115, Water Code, is amended to read
 26 as follows:

27 Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER

CHARGE; PENALTY. In regard to a customer complaint arising out of a charge made by a public utility, if the utility commission [~~the executive director~~] finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the utility commission, the utility commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 days of receiving the order is a violation for which the utility commission may impose an administrative penalty under Section 13.4151.

SECTION 70. Subsections (a), (f), and (g), Section 13.412, Water Code, are amended to read as follows:

(a) At the request of the utility commission or the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

- (1) has abandoned operation of its facilities;
- (2) informs the utility commission or the commission that the owner is abandoning the system;
- (3) violates a final order of the utility commission or the commission; or
- (4) allows any property owned or controlled by it to be used in violation of a final order of the utility commission or the commission.

(f) For purposes of this section and Section 13.4132, abandonment may include but is not limited to:

- (1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the

1 result that the utility service provider has issued a notice of
2 discontinuance of necessary services;

3 (2) failure to provide appropriate water or wastewater
4 treatment so that a potential health hazard results;

5 (3) failure to adequately maintain facilities,
6 resulting in potential health hazards, extended outages, or
7 repeated service interruptions;

8 (4) failure to provide customers adequate notice of a
9 health hazard or potential health hazard;

10 (5) failure to secure an alternative available water
11 supply during an outage;

12 (6) displaying a pattern of hostility toward or
13 repeatedly failing to respond to the utility commission or the
14 commission or the utility's customers; and

15 (7) failure to provide the utility commission or the
16 commission with adequate information on how to contact the utility
17 for normal business and emergency purposes.

18 (g) Notwithstanding Section 64.021, Civil Practice and
19 Remedies Code, a receiver appointed under this section may seek
20 ~~[commission]~~ approval from the utility commission and the
21 commission to acquire the water or sewer utility's facilities and
22 transfer the utility's certificate of convenience and necessity.
23 The receiver must apply in accordance with Subchapter H.

24 SECTION 71. Section 13.413, Water Code, is amended to read
25 as follows:

26 Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The
27 receiver may, subject to the approval of the court and after giving

1 notice to all interested parties, sell or otherwise dispose of all
2 or part of the real or personal property of a water or sewer utility
3 against which a proceeding has been brought under this subchapter
4 to pay the costs incurred in the operation of the receivership. The
5 costs include:

- 6 (1) payment of fees to the receiver for his services;
- 7 (2) payment of fees to attorneys, accountants,
8 engineers, or any other person or entity that provides goods or
9 services necessary to the operation of the receivership; and
- 10 (3) payment of costs incurred in ensuring that any
11 property owned or controlled by a water or sewer utility is not used
12 in violation of a final order of the utility commission or the
13 commission.

14 SECTION 72. Section 13.4131, Water Code, is amended to read
15 as follows:

16 Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The
17 utility commission, after providing to the utility notice and an
18 opportunity for a hearing, may place a utility under supervision
19 for gross or continuing mismanagement, gross or continuing
20 noncompliance with this chapter or a rule adopted under this
21 chapter [~~commission rules~~], or noncompliance with an order issued
22 under this chapter [~~commission orders~~].

23 (b) While supervising a utility, the utility commission may
24 require the utility to abide by conditions and requirements
25 prescribed by the utility commission, including:

- 26 (1) management requirements;
- 27 (2) additional reporting requirements;

(3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets; and

(4) a requirement that the utility place the utility's funds into an account in a financial institution approved by the utility commission and use of those funds shall be restricted to reasonable and necessary utility expenses.

(c) While supervising a utility, the utility commission may require that the utility obtain [~~commission~~] approval from the utility commission before taking any action that may be restricted under Subsection (b) [~~of this section~~]. Any action or transaction which occurs without [~~commission~~] approval may be voided by the utility commission.

SECTION 73. Subsections (a), (b), and (d), Section 13.4132, Water Code, are amended to read as follows:

(a) The utility commission or the commission, after providing to the utility notice and an opportunity to be heard by the commissioners at a utility commission or commission meeting, may authorize a willing person to temporarily manage and operate a utility if the utility:

(1) has discontinued or abandoned operations or the provision of services; or

(2) has been or is being referred to the attorney general for the appointment of a receiver under Section 13.412.

(b) The utility commission or the commission may appoint a person under this section by emergency order, and notice of the action is adequate if the notice is mailed or hand-delivered to the

1 last known address of the utility's headquarters.

2 (d) This section does not affect the authority of the
3 utility commission or the commission to pursue an enforcement claim
4 against a utility or an affiliated interest.

5 SECTION 74. Subsections (a) and (c), Section 13.4133, Water
6 Code, are amended to read as follows:

7 (a) Notwithstanding the requirements of Subchapter F
8 [~~Section 13.187 of this code~~], the utility commission may authorize
9 an emergency rate increase for a utility for which a person has been
10 appointed under Section 13.4132 [~~of this code~~] or for which a
11 receiver has been appointed under Section 13.412 [~~of this code~~] if
12 the increase is necessary to ensure the provision of continuous and
13 adequate services to the utility's customers.

14 (c) The utility commission shall schedule a hearing to
15 establish a final rate within 15 months after the date on which an
16 emergency rate increase takes effect. The utility commission shall
17 require the utility to provide notice of the hearing to each
18 customer. The additional revenues collected under an emergency
19 rate increase are subject to refund if the utility commission finds
20 that the rate increase was larger than necessary to ensure
21 continuous and adequate service.

22 SECTION 75. Subsections (a) and (c), Section 13.414, Water
23 Code, are amended to read as follows:

24 (a) Any retail public utility or affiliated interest that
25 violates this chapter, fails to perform a duty imposed on it, or
26 fails, neglects, or refuses to obey an order, rule, direction, or
27 requirement of the utility commission or the commission or decree

1 or judgment of a court is subject to a civil penalty of not less than
2 \$100 nor more than \$5,000 for each violation.

3 (c) The attorney general shall institute suit on his own
4 initiative or at the request of, in the name of, and on behalf of the
5 utility commission or the commission in a court of competent
6 jurisdiction to recover the penalty under this section.

7 SECTION 76. Subsections (a), (b), (c), (d), (e), (f), (g),
8 (h), (i), (j), (k), and (m), Section 13.4151, Water Code, are
9 amended to read as follows:

10 (a) If a person, affiliated interest, or entity subject to
11 the jurisdiction of the utility commission or the commission
12 violates this chapter or a rule or order adopted under this chapter,
13 the utility commission or the commission, as applicable, may assess
14 a penalty against that person, affiliated interest, or entity as
15 provided by this section. The penalty may be in an amount not to
16 exceed \$5,000 a day. Each day a violation continues may be
17 considered a separate violation.

18 (b) In determining the amount of the penalty, the utility
19 commission or the commission shall consider:

20 (1) the nature, circumstances, extent, duration, and
21 gravity of the prohibited acts or omissions;

22 (2) with respect to the alleged violator:

23 (A) the history and extent of previous
24 violations;

25 (B) the degree of culpability, including whether
26 the violation was attributable to mechanical or electrical failures
27 and whether the violation could have been reasonably anticipated

1 and avoided;

2 (C) the demonstrated good faith, including
3 actions taken by the person, affiliated interest, or entity to
4 correct the cause of the violation;

5 (D) any economic benefit gained through the
6 violation; and

7 (E) the amount necessary to deter future
8 violations; and

9 (3) any other matters that justice requires.

10 (c) If, after examination of a possible violation and the
11 facts surrounding that possible violation, the utility commission
12 or the executive director of the commission concludes that a
13 violation has occurred, the utility commission or the executive
14 director may issue a preliminary report stating the facts on which
15 that conclusion is based, recommending that a penalty under this
16 section be imposed on the person, affiliated interest, or retail
17 public utility charged, and recommending the amount of that
18 proposed penalty. The utility commission or the executive director
19 shall base the recommended amount of the proposed penalty on the
20 factors provided by Subsection (b) [~~of this section~~], and shall
21 analyze each factor for the benefit of the appropriate agency
22 [~~commission~~].

23 (d) Not later than the 10th day after the date on which the
24 report is issued, the utility commission or the executive director
25 of the commission shall give written notice of the report to the
26 person, affiliated interest, or retail public utility charged with
27 the violation. The notice shall include a brief summary of the

1 charges, a statement of the amount of the penalty recommended, and a
2 statement of the right of the person, affiliated interest, or
3 retail public utility charged to a hearing on the occurrence of the
4 violation, the amount of the penalty, or both.

5 (e) Not later than the 20th day after the date on which
6 notice is received, the person, affiliated interest, or retail
7 public utility charged may give the appropriate agency [~~commission~~]
8 written consent to the [~~executive director's~~] report described by
9 Subsection (c), including the recommended penalty, or may make a
10 written request for a hearing.

11 (f) If the person, affiliated interest, or retail public
12 utility charged with the violation consents to the penalty
13 recommended in the report described by Subsection (c) [~~by the~~
14 ~~executive director~~] or fails to timely respond to the notice, the
15 utility commission or the commission by order shall assess that
16 penalty or order a hearing to be held on the findings and
17 recommendations in the [~~executive director's~~] report. If the
18 utility commission or the commission assesses the penalty
19 recommended by the report, the utility commission or the commission
20 shall give written notice to the person, affiliated interest, or
21 retail public utility charged of its decision.

22 (g) If the person, affiliated interest, or retail public
23 utility charged requests or the utility commission or the
24 commission orders a hearing, the appropriate agency [~~commission~~]
25 shall call a hearing and give notice of the hearing. As a result of
26 the hearing, the appropriate agency [~~commission~~] by order may find
27 that a violation has occurred and may assess a civil penalty, may

1 find that a violation has occurred but that no penalty should be
2 assessed, or may find that no violation has occurred. All
3 proceedings under this subsection are subject to Chapter 2001,
4 Government Code. In making any penalty decision, the appropriate
5 agency [~~commission~~] shall analyze each of the factors provided by
6 Subsection (b) [~~of this section~~].

7 (h) The utility commission or the commission shall give
8 notice of its decision to the person, affiliated interest, or
9 retail public utility charged, and if the appropriate agency
10 [~~commission~~] finds that a violation has occurred and has assessed a
11 penalty, that agency [~~the commission~~] shall give written notice to
12 the person, affiliated interest, or retail public utility charged
13 of its findings, of the amount of the penalty, and of the person's,
14 affiliated interest's, or retail public utility's right to judicial
15 review of the agency's [~~commission's~~] order. If the utility
16 commission or the commission is required to give notice of a penalty
17 under this subsection or Subsection (f) [~~of this section~~], the
18 appropriate agency [~~commission~~] shall file notice of that agency's
19 [~~its~~] decision in the Texas Register not later than the 10th day
20 after the date on which the decision is adopted.

21 (i) Within the 30-day period immediately following the day
22 on which the utility commission's or commission's order is final, as
23 provided by Subchapter F, Chapter 2001, Government Code, the
24 person, affiliated interest, or retail public utility charged with
25 the penalty shall:

26 (1) pay the penalty in full; or

27 (2) if the person, affiliated interest, or retail

1 public utility seeks judicial review of the fact of the violation,
2 the amount of the penalty, or both:

3 (A) forward the amount of the penalty to the
4 appropriate agency ~~[commission]~~ for placement in an escrow account;
5 or

6 (B) post with the appropriate agency
7 ~~[commission]~~ a supersedeas bond in a form approved by the agency
8 ~~[commission]~~ for the amount of the penalty to be effective until all
9 judicial review of the order or decision is final.

10 (j) Failure to forward the money to or to post the bond with
11 the utility commission or the ~~commission~~ within the time provided
12 by Subsection (i) ~~[of this section]~~ constitutes a waiver of all
13 legal rights to judicial review. If the person, affiliated
14 interest, or retail public utility charged fails to forward the
15 money or post the bond as provided by Subsection (i) ~~[of this~~
16 ~~section]~~, the appropriate agency ~~[commission]~~ or the executive
17 director of that agency may forward the matter to the attorney
18 general for enforcement.

19 (k) Judicial review of the order or decision of the utility
20 commission or the ~~commission~~ assessing the penalty shall be under
21 the substantial evidence rule and may be instituted by filing a
22 petition with a district court in Travis County, as provided by
23 Subchapter G, Chapter 2001, Government Code.

24 (m) Notwithstanding any other provision of law, the utility
25 commission or the ~~commission~~ may compromise, modify, extend the
26 time for payment of, or remit, with or without condition, any
27 penalty imposed under this section.

SECTION 77. Section 13.417, Water Code, is amended to read as follows:

Sec. 13.417. CONTEMPT PROCEEDINGS. If any person or retail public utility fails to comply with any lawful order of the utility commission or the commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the utility commission or the commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

SECTION 78. Section 13.418, Water Code, is amended to read as follows:

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER UTILITY IMPROVEMENT ACCOUNT. (a) Fines and penalties collected under this chapter from a retail public utility that is not a public utility in other than criminal proceedings shall be ~~[paid to the commission and]~~ deposited in the general revenue fund.

(b) Fines and penalties collected from a public utility under this chapter in other than criminal proceedings shall be ~~[paid to the commission and]~~ deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 79. Subdivision (7), Section 13.501, Water Code, is amended to read as follows:

(7) "Multiple use facility" means commercial or industrial parks, office complexes, marinas, and others specifically identified in utility commission rules with five or more units.

SECTION 80. Subsection (e), Section 13.502, Water Code, is amended to read as follows:

(e) An owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may not change from submetered billing to allocated billing unless:

(1) the utility commission [~~executive director~~] approves of the change in writing after a demonstration of good cause, including meter reading or billing problems that could not feasibly be corrected or equipment failures; and

(2) the property owner meets rental agreement requirements established by the utility commission.

SECTION 81. Subsections (a), (b), and (e), Section 13.503, Water Code, are amended to read as follows:

(a) The utility commission shall encourage submetering of individual rental or dwelling units by master meter operators or building owners to enhance the conservation of water resources.

(b) Notwithstanding any other law, the utility commission shall adopt rules and standards under which an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility that is not individually metered for water for each rental or dwelling unit may install submetering equipment for each individual rental or dwelling unit for the purpose of fairly allocating the cost of each individual rental or dwelling unit's water consumption, including wastewater charges based on water consumption. In addition to other appropriate safeguards for the tenant, the rules shall require that, except as provided by this section, an apartment house owner, manufactured home rental

1 community owner, multiple use facility owner, or condominium
2 manager may not impose on the tenant any extra charges, over and
3 above the cost per gallon and any other applicable taxes and
4 surcharges that are charged by the retail public utility to the
5 owner or manager, and that the rental unit or apartment house owner
6 or manager shall maintain adequate records regarding submetering
7 and make the records available for inspection by the tenant during
8 reasonable business hours. The rules shall allow an owner or
9 manager to charge a tenant a fee for late payment of a submetered
10 water bill if the amount of the fee does not exceed five percent of
11 the bill paid late. All submetering equipment is subject to the
12 rules and standards established by the utility commission for
13 accuracy, testing, and record keeping of meters installed by
14 utilities and to the meter-testing requirements of Section 13.140
15 [~~of this code~~].

16 (e) The utility commission may authorize a building owner to
17 use submetering equipment that relies on integrated radio based
18 meter reading systems and remote registration in a building
19 plumbing system using submeters that comply with nationally
20 recognized plumbing standards and are as accurate as utility water
21 meters in single application conditions.

22 SECTION 82. Section 13.5031, Water Code, is amended to read
23 as follows:

24 Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any
25 other law, the utility commission shall adopt rules and standards
26 governing billing systems or methods used by manufactured home
27 rental community owners, apartment house owners, condominium

1 managers, or owners of other multiple use facilities for prorating
2 or allocating among tenants nonsubmetered master metered utility
3 service costs. In addition to other appropriate safeguards for the
4 tenant, those rules shall require that:

5 (1) the rental agreement contain a clear written
6 description of the method of calculation of the allocation of
7 nonsubmetered master metered utilities for the manufactured home
8 rental community, apartment house, or multiple use facility;

9 (2) the rental agreement contain a statement of the
10 average manufactured home, apartment, or multiple use facility unit
11 monthly bill for all units for any allocation of those utilities for
12 the previous calendar year;

13 (3) except as provided by this section, an owner or
14 condominium manager may not impose additional charges on a tenant
15 in excess of the actual charges imposed on the owner or condominium
16 manager for utility consumption by the manufactured home rental
17 community, apartment house, or multiple use facility;

18 (4) the owner or condominium manager shall maintain
19 adequate records regarding the utility consumption of the
20 manufactured home rental community, apartment house, or multiple
21 use facility, the charges assessed by the retail public utility,
22 and the allocation of the utility costs to the tenants;

23 (5) the owner or condominium manager shall maintain
24 all necessary records concerning utility allocations, including
25 the retail public utility's bills, and shall make the records
26 available for inspection by the tenants during normal business
27 hours; and

1 (6) the owner or condominium manager may charge a
2 tenant a fee for late payment of an allocated water bill if the
3 amount of the fee does not exceed five percent of the bill paid
4 late.

5 SECTION 83. Section 13.505, Water Code, is amended to read
6 as follows:

7 Sec. 13.505. ENFORCEMENT. In addition to the enforcement
8 provisions contained in Subchapter K [~~of this chapter~~], if an
9 apartment house owner, condominium manager, manufactured home
10 rental community owner, or other multiple use facility owner
11 violates a rule of the utility commission regarding submetering of
12 utility service consumed exclusively within the tenant's dwelling
13 unit or multiple use facility unit or nonsubmetered master metered
14 utility costs, the tenant may recover three times the amount of any
15 overcharge, a civil penalty equal to one month's rent, reasonable
16 attorney's fees, and court costs from the owner or condominium
17 manager. However, an owner of an apartment house, manufactured
18 home rental community, or other multiple use facility or
19 condominium manager is not liable for a civil penalty if the owner
20 or condominium manager proves the violation was a good faith,
21 unintentional mistake.

22 SECTION 84. Section 13.512, Water Code, is amended to read
23 as follows:

24 Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION
25 CONTRACTS. Any eligible city is authorized to enter into
26 privatization contracts if such action is recommended by the board
27 of utility trustees and authorized by the governing body of the

1 eligible city pursuant to an ordinance. Any privatization contract
 2 entered into prior to the effective date of this Act is validated,
 3 ratified, and approved. Each eligible city shall file a copy of its
 4 privatization contract with the utility commission, for
 5 information purposes only, within 60 days of execution or the
 6 effective date of this Act, whichever is later.

7 SECTION 85. Section 13.513, Water Code, is amended to read
 8 as follows:

9 Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE
 10 PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider
 11 shall not constitute a "water and sewer utility," a "public
 12 utility," a "utility," or a "retail public utility" within the
 13 meaning of this chapter [~~Chapter 13~~] as a result of entering into or
 14 performing a privatization contract, if the governing body of the
 15 eligible city shall so elect by ordinance and provide notice
 16 thereof in writing to the utility commission; provided, however,
 17 this provision shall not affect the application of this chapter
 18 [~~Chapter 13~~] to an eligible city itself. Notwithstanding anything
 19 contained in this section, any service provider who seeks to extend
 20 or render sewer service to any person or municipality other than, or
 21 in addition to, an eligible city may be a "public utility" for the
 22 purposes of this chapter [~~Chapter 13~~] with respect to such other
 23 person or municipality.

24 SECTION 86. Subsection (c), Section 49.352, Water Code, is
 25 amended to read as follows:

26 (c) For purposes of this section, a municipality may obtain
 27 single certification in the manner provided by Section 13.255,

1 except that the municipality may file an application with the
2 Public Utility Commission of Texas ~~[commission]~~ to grant single
3 certification immediately after the municipality provides notice
4 of intent to provide service as required by Section 13.255(b).

5 SECTION 87. Subsection (e), Section 552.047, Local
6 Government Code, is amended to read as follows:

7 (e) Users residing within the established service area, but
8 outside the municipality's boundaries, may appeal rates
9 established for drainage charges under ~~[to the Texas Natural~~
10 ~~Resource Conservation Commission as authorized by]~~ Section
11 13.043(b), [of the] Water Code.

12 SECTION 88. Subsection (b), Section 7201.004, Special
13 District Local Laws Code, is amended to read as follows:

14 (b) This section does not apply to:

15 (1) rules or regulations concerning potable water
16 quality standards; or

17 (2) conflicts relating to service areas or
18 certificates issued to the corporation or district by the Public
19 Utility Commission of Texas or the Texas Commission on
20 Environmental Quality.

21 SECTION 89. Subsection (c), Section 7201.005, Special
22 District Local Laws Code, is amended to read as follows:

23 (c) District boundaries may be modified in accordance with
24 Chapters 13 and 49, Water Code, except that the boundaries must
25 include all territory in any area included under a certificate of
26 convenience and necessity issued by the Public Utility Commission
27 of Texas or the Texas Commission on Environmental Quality to the

1 district.

2 SECTION 90. Section 7201.102, Special District Local Laws
3 Code, is amended to read as follows:

4 Sec. 7201.102. PROVISION OF SERVICE. The district shall at
5 all times operate and construct necessary improvements within the
6 certificated areas established by the Public Utility Commission of
7 Texas or the Texas Commission on Environmental Quality [~~commission~~]
8 to provide uninterrupted, continuous, and adequate service to
9 existing and future customers for water, sewer, and contract
10 services.

11 SECTION 91. Subsection (b), Section 8363.106, Special
12 District Local Laws Code, is amended to read as follows:

13 (b) In relation to a retail public utility that provides
14 water or sewer service to all or part of the area of the district
15 under a certificate of public convenience and necessity, the
16 district may exercise the powers given to a municipality provided
17 by Section 13.255, Water Code, as if the district were a
18 municipality that had annexed the area of the district. The Public
19 Utility Commission of Texas [~~commission~~] shall grant single
20 certification as to the city as provided by Section 13.255(c),
21 Water Code, in the event that the district applies for the
22 certification on the city's behalf in the manner provided by
23 Section 13.255(b), Water Code.

24 SECTION 92. Subsection (a), Section 8363.251, Special
25 District Local Laws Code, is amended to read as follows:

26 (a) The city may dissolve the district by ordinance after
27 provision is made for all debts incurred by the district if one or

1 more of the following does not occur:

2 (1) on or before the 90th day after the effective date
3 of the Act enacting this chapter, the city receives one or more
4 petitions requesting annexation of all territory in the district
5 remaining in the extraterritorial jurisdiction of the city;

6 (2) on or before the last day of the ninth month after
7 the effective date of the Act enacting this chapter, the city adopts
8 one or more ordinances annexing all territory in the district
9 remaining in the city's extraterritorial jurisdiction;

10 (3) on or before the last day of the third year after
11 the effective date of the Act enacting this chapter, the Public
12 Utility Commission of Texas [~~commission~~] issues an order approving
13 the sale and transfer of a certificate of public convenience and
14 necessity authorizing the city to provide retail water service to
15 territory in the district; or

16 (4) by the end of the fifth year after the effective
17 date of the Act enacting this chapter, the district has completed
18 construction of internal streets and water and sanitary sewer
19 facilities sufficient to serve at least 100 residential lots in the
20 district.

21 SECTION 93. Section 8801.201, Special District Local Laws
22 Code, is amended to read as follows:

23 Sec. 8801.201. APPEAL OF SURFACE WATER RATES. (a) A
24 person who is required to convert to surface water under this
25 chapter and who purchases that water supply wholesale from a
26 political subdivision as defined by Section 12.013(b), Water Code,
27 may appeal to the Public Utility Commission of Texas [~~commission~~]

1 the rates the political subdivision charges to the person. Chapter
2 12, Water Code, and rules adopted under that chapter apply to an
3 appeal under this section.

4 (b) The Public Utility Commission of Texas [~~commission~~]
5 shall hear the appeal not later than the 180th day after the date
6 the appeal is filed.

7 (c) The Public Utility Commission of Texas [~~commission~~]
8 shall issue a final decision on the appeal not later than the 60th
9 day after the date the hearing ends.

10 SECTION 94. Subdivision (1), Section 8803.151, Special
11 District Local Laws Code, is amended to read as follows:

12 (1) "Commission" means the Public Utility Commission
13 of Texas [~~Commission on Environmental Quality~~].

14 SECTION 95. Subdivision (1), Section 8808.151, Special
15 District Local Laws Code, is amended to read as follows:

16 (1) "Commission" means the Public Utility Commission
17 of Texas [~~Commission on Environmental Quality~~].

18 SECTION 96. (a) On September 1, 2014, the following are
19 transferred from the Texas Commission on Environmental Quality to
20 the Public Utility Commission of Texas:

21 (1) the powers, duties, functions, programs, and
22 activities of the Texas Commission on Environmental Quality
23 relating to the economic regulation of water and sewer service,
24 including the issuance and transfer of certificates of convenience
25 and necessity, the determination of rates, and the administration
26 of hearings and proceedings involving those matters, under Section
27 12.013 and Chapter 13, Water Code, as provided by this Act;

1 (2) any obligations and contracts of the Texas
2 Commission on Environmental Quality that are directly related to
3 implementing a power, duty, function, program, or activity
4 transferred under this Act; and

5 (3) all property and records in the custody of the
6 Texas Commission on Environmental Quality that are related to a
7 power, duty, function, program, or activity transferred under this
8 Act and all funds appropriated by the legislature for that power,
9 duty, function, program, or activity.

10 (b) The Texas Commission on Environmental Quality shall
11 continue to carry out the commission's duties related to the
12 economic regulation of water and sewer service under the law as it
13 existed immediately before the effective date of this Act until
14 September 1, 2014, and the former law is continued in effect for
15 that purpose.

16 (c) The Texas Commission on Environmental Quality and the
17 Public Utility Commission of Texas shall enter into a memorandum of
18 understanding that:

19 (1) identifies in detail the applicable powers and
20 duties that are transferred by this Act;

21 (2) establishes a plan for the identification and
22 transfer of the records, personnel, property, and unspent
23 appropriations of the Texas Commission on Environmental Quality
24 that are used for purposes of the commission's powers and duties
25 directly related to the economic regulation of water and sewer
26 service under Section 12.013 and Chapter 13, Water Code, as amended
27 by this Act; and

1 (3) establishes a plan for the transfer of all pending
2 applications, hearings, rulemaking proceedings, and orders
3 relating to the economic regulation of water and sewer service
4 under Section 12.013 and Chapter 13, Water Code, as amended by this
5 Act, from the Texas Commission on Environmental Quality to the
6 Public Utility Commission of Texas.

7 (d) The memorandum of understanding under this section:

8 (1) is not required to be adopted by rule under Section
9 5.104, Water Code; and

10 (2) must be completed by August 1, 2014.

11 (e) The executive directors of the Texas Commission on
12 Environmental Quality and the Public Utility Commission of Texas
13 may agree in the memorandum of understanding under this section to
14 transfer to the Public Utility Commission of Texas any personnel of
15 the Texas Commission on Environmental Quality whose functions
16 predominantly involve powers, duties, obligations, functions, and
17 activities related to the economic regulation of water and sewer
18 service under Section 12.013 and Chapter 13, Water Code, as amended
19 by this Act.

20 (f) The Texas Commission on Environmental Quality and the
21 Public Utility Commission of Texas shall periodically update the
22 Office of Public Utility Counsel on the anticipated contents of the
23 memorandum of understanding under this section during the
24 development of the memorandum.

25 (g) On or after September 1, 2013, the Office of Public
26 Utility Counsel may initiate or intervene in a contested case
27 before the Texas Commission on Environmental Quality that the

1 office would be entitled to initiate or intervene in if the case
2 were before the Public Utility Commission of Texas, as authorized
3 by Chapter 13, Water Code, as amended by this Act.

4 (h) The Texas Commission on Environmental Quality and the
5 Public Utility Commission of Texas shall appoint a transition team
6 to accomplish the purposes of this section. The transition team may
7 consult with the Office of Public Utility Counsel to accomplish the
8 purposes of this section. The transition team shall establish
9 guidelines on how the two agencies will cooperate regarding:

- 10 (1) meeting federal drinking water standards;
11 (2) maintaining adequate supplies of water;
12 (3) meeting established design criteria for
13 wastewater treatment plants;
14 (4) demonstrating the economic feasibility of
15 regionalization; and
16 (5) serving the needs of economically distressed
17 areas.

18 (i) The transition team appointed under Subsection (h) of
19 this section shall provide monthly updates to the executive
20 directors of the Texas Commission on Environmental Quality and the
21 Public Utility Commission of Texas on the implementation of this
22 Act and provide a final report on the implementation to the
23 executive directors not later than September 1, 2014.

24 (j) A rule, form, policy, procedure, or decision of the
25 Texas Commission on Environmental Quality related to a power, duty,
26 function, program, or activity transferred under this Act continues
27 in effect as a rule, form, policy, procedure, or decision of the

1 Public Utility Commission of Texas and remains in effect until
2 amended or replaced by that agency. Notwithstanding any other law,
3 beginning September 1, 2013, the Public Utility Commission of Texas
4 may propose rules, forms, policies, and procedures related to a
5 function to be transferred to the Public Utility Commission of
6 Texas under this Act.

7 (k) The Public Utility Commission of Texas and the Texas
8 Commission on Environmental Quality shall adopt rules to implement
9 the changes in law made by this Act to Section 12.013 and Chapter
10 13, Water Code, not later than September 1, 2015.

11 (1) An affiliate of a Class A utility, as those terms are
12 defined by Section 13.002, Water Code, as amended by this Act, may
13 not file an application for a rate change on or after the effective
14 date of this Act unless the affiliated Class A utility has filed for
15 a rate change on or after that date. In relation to the application
16 filed by the affiliate of the Class A utility, the Public Utility
17 Commission of Texas:

18 (1) may not approve the rate change application until
19 the Public Utility Commission of Texas approves the rate change
20 application filed by the affiliated Class A utility; and

21 (2) may require the affiliate to comply with the Class
22 A utility rate change process prescribed by Section 13.187, Water
23 Code, regardless of whether the affiliate is classified as a Class
24 A, B, or C utility under Section 13.002, Water Code, as amended by
25 this Act.

26 SECTION 97. This Act takes effect September 1, 2013.

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President of the Senate	Speaker of the House

I hereby certify that S.B. No. 567 passed the Senate on April 3, 2013, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 13, 2013, by the following vote: Yeas 31, Nays 0.

<hr/>
Secretary of the Senate

I hereby certify that S.B. No. 567 passed the House, with amendments, on May 3, 2013, by the following vote: Yeas 141, Nays 0, one present not voting.

<hr/>
Chief Clerk of the House

Approved:

<hr/>
Date

<hr/>
Governor

AN ACT

relating to the designation of a water conservation coordinator by a retail public water utility to implement a water conservation plan.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 13.146, Water Code, is amended to read as follows:

Sec. 13.146. WATER CONSERVATION PLAN. The commission shall require a retail public utility that provides potable water service to 3,300 or more connections to:

(1) submit to the executive administrator of the board a water conservation plan based on specific targets and goals developed by the retail public utility and using appropriate best management practices, as defined by Section 11.002, or other water conservation strategies;

(2) designate a person as the water conservation coordinator responsible for implementing the water conservation plan; and

(3) identify, in writing, the water conservation coordinator to the executive administrator of the board.

SECTION 2. This Act takes effect September 1, 2017.

H.B. No. 1648

President of the Senate

Speaker of the House

I certify that H.B. No. 1648 was passed by the House on April 27, 2017, by the following vote: Yeas 142, Nays 2, 3 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1648 was passed by the Senate on May 18, 2017, by the following vote: Yeas 26, Nays 4.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to an application for a new or amended water right submitted to the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 11.002(1) and (3), Water Code, are amended to read as follows:

(1) "Commission" means the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality.

(3) "Executive director" means the executive director of the Texas ~~[Natural Resource Conservation]~~ Commission on Environmental Quality.

SECTION 2. Section 11.122, Water Code, is amended by adding Subsections (b-1) and (b-2) to read as follows:

(b-1) A holder of a water right that begins using desalinated seawater after acquiring the water right has a right to expedited consideration of an application for an amendment to the water right if the amendment:

(1) authorizes the applicant to divert water from a diversion point that is different from or in addition to the point or points from which the applicant was authorized to divert water before the requested amendment;

(2) authorizes the applicant to divert from the different or additional diversion point an amount of water that is equal to or less than the amount of desalinated seawater used by the

1 applicant;

2 (3) authorizes the applicant to divert from all of the
3 diversion points authorized by the water right an amount of water
4 that is equal to or less than the amount of water the applicant was
5 authorized to divert under the water right before the requested
6 amendment; and

7 (4) does not authorize the water diverted from the
8 different or additional diversion point to be transferred to
9 another river basin.

10 (b-2) The executive director or the commission shall
11 prioritize the technical review of an application that is subject
12 to Subsection (b-1) over the technical review of applications that
13 are not subject to that subsection.

14 SECTION 3. Section 11.125(a), Water Code, is amended to
15 read as follows:

16 (a) The application must be accompanied by a map or plat in
17 the form and containing the information prescribed by the
18 commission ~~[drawn on tracing linen on a scale not less than one inch~~
19 ~~equals 2,000 feet]~~.

20 SECTION 4. Section 11.128, Water Code, is amended to read as
21 follows:

22 Sec. 11.128. PAYMENT OF FEE. The ~~[If the]~~ applicant ~~[is not~~
23 ~~exempted from payment of the filing fee under Section 12.112 of this~~
24 ~~code, he]~~ shall pay the filing fee prescribed by Section 5.701
25 [5.701(c)] at the time ~~[he files]~~ the application is filed. The
26 commission may ~~[shall]~~ not record, file, or consider the
27 application until the executive director certifies to the

1 commission that the fee is paid.

2 SECTION 5. Section 11.134, Water Code, is amended by adding
3 Subsection (b-1) to read as follows:

4 (b-1) In determining whether an appropriation is
5 detrimental to the public welfare under Subsection (b)(3)(C), the
6 commission may consider only the factors that are within the
7 jurisdiction and expertise of the commission as established by this
8 chapter.

9 SECTION 6. Section 2003.047, Government Code, is amended by
10 amending Subsection (e-3) and adding Subsection (e-6) to read as
11 follows:

12 (e-3) The deadline specified by Subsection (e-2) or (e-6),
13 as applicable, may be extended:

14 (1) by agreement of the parties with the approval of
15 the administrative law judge; or

16 (2) by the administrative law judge if the judge
17 determines that failure to extend the deadline would unduly deprive
18 a party of due process or another constitutional right.

19 (e-6) For a matter pertaining to an application described by
20 Section 11.122(b-1), Water Code, the administrative law judge must
21 complete the proceeding and provide a proposal for decision to the
22 commission not later than the 270th day after the date the matter
23 was referred to the office.

24 SECTION 7. Sections 11.125(b) and (c), Water Code, are
25 repealed.

26 SECTION 8. The changes in law made by this Act apply only to
27 an application for a new or amended water right received by the

1 Texas Commission on Environmental Quality on or after the effective
2 date of this Act. An application received before the effective date
3 of this Act is governed by the law in effect on the date the
4 application was received, and the former law is continued in effect
5 for that purpose.

6 SECTION 9. This Act takes effect September 1, 2017.

H.B. No. 3735

President of the Senate

Speaker of the House

I certify that H.B. No. 3735 was passed by the House on May 12, 2017, by the following vote: Yeas 138, Nays 5, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3735 on May 26, 2017, by the following vote: Yeas 143, Nays 2, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3735 was passed by the Senate, with amendments, on May 24, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to the procedure for obtaining a right to use state water if the applicant proposes an alternative source of water that is not state water.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 11.132(c) and (d), Water Code, are amended to read as follows:

(c) In the notice, the commission shall:

- (1) state the name and address of the applicant;
- (2) state the date the application was filed;
- (3) state the purpose and extent of the proposed appropriation of water;
- (4) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;
- (5) identify any proposed alternative source of water, other than state water, identified by the applicant;
- (6) specify the time and location where the commission will consider the application; and
- (7) [~~(6)~~] give any additional information the commission considers necessary.

(d) The commission may act on the application without holding a public hearing if:

- (1) not less than 30 days before the date of action on

1 the application by the commission, the applicant has published the
2 commission's notice of the application at least once in a newspaper
3 regularly published or circulated within the section of the state
4 where the source of water is located;

5 (2) not less than 30 days before the date of action on
6 the application by the commission, the commission mails a copy of
7 the notice by first-class mail, postage prepaid, to:

8 (A) each claimant or appropriator of water from
9 the source of water supply, the record of whose claim or
10 appropriation has been filed with the commission; ~~and~~

11 (B) each groundwater conservation district with
12 jurisdiction over the proposed groundwater production, if the
13 applicant proposes to use groundwater from a well located within a
14 groundwater conservation district as an alternative source of
15 water; and

16 (C) all navigation districts within the river
17 basin concerned; and

18 (3) within 30 days after the date of the newspaper
19 publication of the commission's notice, a public hearing has not
20 been requested in writing by a commissioner, the executive
21 director, or an affected person who objects to the application.

22 SECTION 2. Section 11.135(b), Water Code, is amended to
23 read as follows:

24 (b) The permit shall be in writing and attested by the seal
25 of the commission, and it shall contain substantially the following
26 information:

27 (1) the name of the person to whom the permit is

1 issued;

2 (2) the date the permit is issued;

3 (3) the date the original application was filed;

4 (4) the use or purpose for which the appropriation is
5 to be made;

6 (5) the amount or volume of water authorized to be
7 appropriated for each purpose; if use of the appropriated water is
8 authorized for multiple purposes, the permit shall contain a
9 special condition limiting the total amount of water that may
10 actually be diverted for all of the purposes to the amount of water
11 appropriated;

12 (6) a general description of the source of supply from
13 which the appropriation is proposed to be made, including any
14 alternative source of water that is not state water;

15 (7) the time within which construction or work must
16 begin and the time within which it must be completed; and

17 (8) any other information the commission prescribes.

18 SECTION 3. Sections 11.143(e) and (f), Water Code, are
19 amended to read as follows:

20 (e) In the notice, the commission shall:

21 (1) state the name and post-office address of the
22 applicant;

23 (2) state the date the application was filed;

24 (3) state the purpose and extent of the proposed
25 appropriation of water;

26 (4) identify the source of supply, including any
27 proposed alternative source of water, other than state water,

1 identified by the applicant, and the place where the water is
2 stored; and

3 (5) specify the time and place of the hearing.

4 (f) The notice shall be published only once, at least 20
5 days before the date stated in the notice for the hearing on the
6 application, in a newspaper having general circulation in the
7 county where the dam or reservoir is located. At least 15 days
8 before the date set for the hearing, the commission shall transmit a
9 copy of the notice by first-class mail to each person whose claim or
10 appropriation has been filed with the commission and whose
11 diversion point is downstream from that described in the
12 application. If the notice identifies groundwater from a well
13 located in a groundwater conservation district as a proposed
14 alternative source of water, the notice shall be:

15 (1) sent to the groundwater conservation district in
16 which the well is located; and

17 (2) published, at least 20 days before the date stated
18 in the notice for the hearing, in a newspaper having general
19 circulation in each county in which the groundwater district is
20 located.

21 SECTION 4. The changes in law made by this Act apply only to
22 an application for a new or amended water right received by the
23 Texas Commission on Environmental Quality on or after the effective
24 date of this Act. An application received before the effective date
25 of this Act is governed by the law in effect on the date the
26 application was received, and the former law is continued in effect
27 for that purpose.

1 SECTION 5. This Act takes effect September 1, 2017.

<hr/> <p>President of the Senate</p>	<hr/> <p>Speaker of the House</p>
<p>I hereby certify that S.B. No. 864 passed the Senate on April 3, 2017, by the following vote: Yeas 31, Nays 0.</p>	

	<hr/> <p>Secretary of the Senate</p>
<p>I hereby certify that S.B. No. 864 passed the House on May 19, 2017, by the following vote: Yeas 144, Nays 0, two present not voting.</p>	

	<hr/> <p>Chief Clerk of the House</p>
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Approved:

<hr/> <p>Date</p>

<hr/> <p>Governor</p>

AN ACT

relating to a requirement that the Texas Commission on Environmental Quality provide an expedited procedure for acting on certain applications for an amendment to a water right by certain applicants that use desalinated seawater.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.122, Water Code, is amended by adding Subsections (b-1) and (b-2) to read as follows:

(b-1) A holder of a water right that begins using desalinated seawater after acquiring the water right has a right to expedited consideration of an application for an amendment to the water right if the amendment:

(1) authorizes the applicant to divert water from a diversion point that is different from or in addition to the point or points from which the applicant was authorized to divert water before the requested amendment;

(2) authorizes the applicant to divert from the different or additional diversion point an amount of water that is equal to or less than the amount of desalinated seawater used by the applicant;

(3) authorizes the applicant to divert from all of the diversion points authorized by the water right an amount of water that is equal to or less than the amount of water the applicant was authorized to divert under the water right before the requested

1 amendment;

2 (4) authorizes the applicant to divert water from all
3 of the diversion points authorized by the water right at a combined
4 rate that is equal to or less than the combined rate at which the
5 applicant was authorized to divert water under the water right
6 before the requested amendment; and

7 (5) does not authorize the water diverted from the
8 different or additional diversion point to be transferred to
9 another river basin.

10 (b-2) The executive director or the commission shall
11 prioritize the technical review of an application that is subject
12 to Subsection (b-1) over the technical review of applications that
13 are not subject to that subsection.

14 SECTION 2. Section 2003.047, Government Code, is amended by
15 amending Subsection (e-3) and adding Subsection (e-6) to read as
16 follows:

17 (e-3) The deadline specified by Subsection (e-2) or (e-6),
18 as applicable, may be extended:

19 (1) by agreement of the parties with the approval of
20 the administrative law judge; or

21 (2) by the administrative law judge if the judge
22 determines that failure to extend the deadline would unduly deprive
23 a party of due process or another constitutional right.

24 (e-6) For a matter pertaining to an application described by
25 Section 11.122(b-1), Water Code, the administrative law judge must
26 complete the proceeding and provide a proposal for decision to the
27 commission not later than the 270th day after the date the matter

1 was referred to the office.

2 SECTION 3. The changes in law made by this Act apply only to
3 an application for an amendment to a water right that is filed with
4 the Texas Commission on Environmental Quality on or after the
5 effective date of this Act. An application filed with the
6 commission before the effective date of this Act is governed by the
7 law as it existed immediately before the effective date of this Act,
8 and that law is continued in effect for that purpose.

9 SECTION 4. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1430 passed the Senate on April 18, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1430 passed the House on May 21, 2017, by the following vote: Yeas 141, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §80.4 and §80.252.

Background and Summary of the Factual Basis for the Proposed Rules

In 2013, the 83rd Texas Legislature passed House Bill (HB) 1600 and Senate Bill (SB) 567, which became effective September 1, 2014. HB 1600 and SB 567 transferred from the TCEQ to the Public Utility Commission of Texas (PUC) the functions relating to the economic regulation of water and sewer utilities. HB 1600 and SB 567 amended Texas Water Code (TWC), §5.311(a), as it relates to the commission's authority to delegate to an administrative law judge (ALJ) of the State Office of Administrative Hearings (SOAH) the responsibility to issue interlocutory orders related to interim rates under TWC, Chapter 13. New TWC, §5.311(a), removes the commission's authority to delegate the issuance of interlocutory orders related to interim rates under TWC, Chapter 13. Because the commission is proposing changes to §80.4 to implement HB 3735 and SB 1430 from the 85th Texas Legislature, the commission is proposing in this same rulemaking to delete §80.4(c)(15), which implements HB 1600 and SB 567 from the 83rd Texas Legislature, to avoid open section conflicts under *Texas Register* publication requirements. The remainder of HB 1600 and SB 567 will be implemented in a separate rulemaking project (Rule Project Number 2013-057-291-OW).

In 2017, the 85th Texas Legislature passed HB 3735 and SB 1430, which became effective on September 1, 2017. SB 1430 amended the TWC as it relates to a requirement that the TCEQ provide an expedited procedure for acting on certain applications for an amendment to a

water right by applicants that begin to use desalinated seawater. New TWC, §11.122(b-1), provides that an applicant has a right, under specified circumstances, to expedited consideration of an application to change the diversion point for their existing non-saline surface water right when the applicant begins using desalinated seawater. New TWC, §11.122(b-2), further requires the executive director or the commission to prioritize the technical review of such an application over the technical review of other applications that are not subject to TWC, §11.122(b-1). Finally, for a contested case hearing relating to an application under new TWC, §11.122(b-1), amended Texas Government Code, §2003.047(e-3) and (e-6), require the SOAH ALJ to complete a proceeding and provide a proposal for decision (PFD) to the commission not later than the 270th day after the date the matter was referred for a hearing. Amended Texas Government Code, §2003.047(e-3), allows the ALJ to extend a TWC, §11.122(b-1) proceeding by agreement of the parties with the approval of the a ALJ; or by the ALJ if the judge determines that failure to extend the deadline would unduly deprive a party of due process or another constitutional right. Under existing Texas Government Code, §2003.047(e-4), for the purposes of Texas Government Code, §2003.047(e-3), a political subdivision has the same constitutional rights as an individual.

HB 3735 includes the same provisions described in SB 1430, which were added to HB 3735 in a Senate Committee Substitute. Other changes in HB 3735 are included in corresponding rulemakings under 30 TAC Chapters 295 and 297, published in this issue of the *Texas Register*.

The commission proposes to delete §80.4(c)(15) to implement the transfer of functions from

the TCEQ to the PUC required by HB 1600 and SB 567 (83rd Texas Legislature, 2013).

Further, the commission proposes amendments to Chapter 80, to implement the changes to the TCEQ contested case hearing process required by HB 3735 and SB 1430 (85th Texas Legislature, 2017).

In September 2017, the commission held an informal stakeholder meeting to solicit comments regarding the implementation of HB 3735 and SB 1430. While staff intends to strictly implement the legislation as the Legislature intended, staff did ask for input from stakeholders on the following issues: How to implement SB 1430 and HB 3735, which require the TCEQ to provide an expedited procedure for certain amendments to water rights and also requires the executive director to prioritize the technical review of those applications over applications that are not subject to the expedited process? What should the "expedited process" look like? Is the expedited process for desalination permits in 30 TAC Chapter 295, Subchapter G, an appropriate model? What does "prioritize" mean? How does it harmonize (or not) with the priority system? Does prioritize mean to skip the line of priority? If yes, how should the commission consider/model the impacts that would not occur to water rights applications, but for the expedited applications jumping to the front of the priority line?

The executive director based these proposed rules on consideration of the legislation and consideration of comments received from the stakeholders.

In corresponding rulemakings published in this issue of the *Texas Register*, the commission

also proposes to implement HB 1648 (85th Texas Legislature, 2017) in amended sections in 30 TAC Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements; and HB 3735, SB 864, and SB 1430 (85th Texas Legislature, 2017) in Chapter 295, Water Rights, Procedural; and, Chapter 297, Water Rights, Substantive.

Section by Section Discussion

Chapter 80 sets forth the procedures for contested case hearings conducted on behalf of the TCEQ.

§80.4, Judges

Section 80.4, defines the authority and responsibilities of an ALJ that oversees a contested case hearing referred to SOAH by the TCEQ. The commission proposes to delete §80.4(c)(15), which pertains to the functions that transferred from the commission to the PUC in HB 1600 and SB 567 from the 83rd Legislative Session. The subsequent paragraphs are proposed to be renumbered accordingly. The commission proposes nonsubstantive amendments to renumbered §80.4(c)(16) and (17) to comply with Texas Register formatting requirements. The commission proposes §80.4(c)(18) which states that for applications subject to TWC, §11.122(b-1), an ALJ may extend the proceeding beyond 270 days after the first day of the preliminary hearing or on an earlier date specified by the commission if the judge determines that failure to grant an extension would unduly deprive a party of due process or another constitutional right; or by agreement of the parties with approval of the judge. The commission also proposes to amend §80.4(d) by adding the reference to renumbered subsection (c)(16), which was previously referenced as subsection (c)(17). The

commission proposes to leave in the reference to subsection (c)(18) in order to include the proposed paragraph in the list of paragraphs for which a political subdivision has the same constitutional rights as an individual. The commission proposes these amendments to implement Texas Government Code, §2003.047, as amended by HB 3735 and SB 1430.

§80.252, Judge's Proposal for Decision

Section 80.252 sets forth the amount of time by which an ALJ must complete a contested case hearing referred to SOAH by the TCEQ and to submit a PFD to the commission. The commission proposes to amend §80.252(b) to add that applications not subject to TWC, §11.122(b-1) as well as applications filed before September 1, 2015, or applications not referred under TWC, §5.556 or §5.557 are not governed by that subsection. The commission also proposes nonsubstantive changes to §80.252(b) and (c) to comply with Texas Register formatting requirements. The commission proposes to amend §80.252 by adding subsection (d) which sets forth the timeline for conducting a contested case hearing and submitting a PFD for an application filed on or after September 1, 2017, and subject to TWC, §11.122(b-1). For these applications, proposed §80.252(d) directs the ALJ to file a written PFD with the chief clerk no later than 270 days after the first day of the preliminary hearing, the date specified by the commission, or the date to which the deadline was extended pursuant to Texas Government Code, §2003.047(e-3). Additionally, the proposed amendment directs the ALJ to send a copy of the PFD by certified mail to the executive director and to each party. The subsequent subsections are proposed to be re-lettered accordingly. The commission proposes these amendments to implement Texas Government Code, §2003.047, as amended by HB 3735 and SB 1430.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are expected for the agency or for other units of state or local government.

The proposed rulemaking implements portions of HB 1600 and SB 567 from the 83rd Texas Legislature, 2013. These bills relate to the transfer of functions from the TCEQ to the PUC for the economic regulation of water and sewer utilities. The proposed rulemaking also implements SB 1430 and portions of HB 3735, from the 85th Texas Legislature, 2017, by providing an expedited contested case hearing process for certain applications for an amendment to a water right by applicants that begin to use desalinated seawater.

The proposed amendments to Chapter 80 implement changes to the TCEQ contested case hearing process required by HB 3735 and SB 1430. New TWC, §11.122(b-1), provides that an applicant has a right, under specified circumstances, to expedited consideration of an application to change the diversion point for their existing non-saline surface water right when the applicant begins using desalinated seawater. New TWC, §11.122(b-2), further requires the executive director or the commission to prioritize the technical review of such an application over the technical review of other applications that are not subject to that subsection. Finally, for a contested case hearing relating to an application under new TWC, §11.122(b-1), newly amended Texas Government Code, §2003.047(e-3) and (e-6), require the SOAH ALJ to complete a proceeding and provide a PFD to the commission not later than the

270th day after the date the matter was referred for a hearing.

The proposed rules add new requirements for applications referred under TWC, §11.122(b-1), that allow an ALJ to extend the proceeding beyond 270 days after the first day of the preliminary hearing or on an earlier date specified by the commission if the judge determines that failure to grant an extension would unduly deprive a party of due process or another constitutional right; or by agreement of the parties with approval of the judge. The commission also proposes to add these proposed changes to the list of paragraphs for which a political subdivision has the same constitutional rights as an individual.

The commission further proposes to add §80.252(d) that sets forth the timeline for conducting a contested case hearing and submitting a PFD for an application filed on or after September 1, 2017, and referred under TWC, §11.122(b-1). The proposed rules direct the ALJ to file a written PFD with the chief clerk no later than 270 days after the first day of the preliminary hearing, the date specified by the commission, or the date to which the deadline was extended pursuant to Texas Government Code, §2003.047(e-3). Additionally, the proposed amendment directs the ALJ to send a copy of the PFD by certified mail to the executive director and to each party.

The rulemaking will require the TCEQ and SOAH to expedite the contested case hearing process for an amendment to a water right by applicants that begin to use desalinated seawater. This fiscal note assumes that both agencies would use existing resources to implement the proposed rules and that no significant savings would be realized by

applicants due to any shortening of the timeframes of contested case hearings or limitation of issues considered.

The expedited contested case hearing process may streamline the regulatory process for a governmental entity that owns a surface water right and begins using desalinated seawater in lieu of using their surface water right. It is unknown how many entities will be affected because the TCEQ has no information regarding how many entities will begin using desalinated seawater in lieu of a surface water right. The expedited contested case hearing process will not impose any new responsibilities, instead it provides a streamlined process for an applicant to amend a surface water right.

The proposed rulemaking also amends §80.4 by deleting §80.4(c)(15), authorizing judges to issue interim rate orders under TWC, Chapter 13. This proposed amendment will eliminate a rule that is no longer applicable to the commission as a result of the transfer of the responsibility for the economic regulation of water and sewer utilities to the PUC on September 1, 2014. There are no fiscal implications associated with this deletion.

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the potential for the encouragement of the development and use of desalinated seawater as a water management strategy through the implementation of an expedited water right permitting process and the removal of an obsolete rule provision.

No significant fiscal implications are anticipated for businesses or individuals as a result of the implementation or administration of the proposed rules.

The rulemaking will require the TCEQ and SOAH to expedite the contested case hearing process for certain amendments to a water right by applicants that begin to use desalinated seawater. The expedited contested case hearing process may streamline the regulatory process for businesses or individuals that own a surface water right and begins using desalinated seawater in lieu of using their surface water right. It is unknown how many entities will be affected because the TCEQ has no information regarding how many entities will begin using desalinated seawater in lieu of a surface water right. The expedited contested case hearing process will not impose any new responsibilities, instead it provides a streamlined process for an applicant to amend a surface water right. There may be cost savings to applicants who use the expedited permitting process due to the shortened period of time needed for contested case hearings.

Additionally, the proposed rulemaking will remove §80.4(c)(15) which is no longer applicable to the commission as a result of the transfer of the responsibility for the economic regulation of water and sewer utilities to the PUC.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely

affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect any rural community in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities. The proposed rules are necessary in order to implement HB 1600 and SB 567 from the 83rd Texas Legislature, 2013 and HB 3735 and SB 1430 from the 85th Texas Legislature, 2017.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules are necessary in order to implement HB 1600 and SB 567 from the 83rd Texas Legislative Session, 2013 and HB 3735 and SB 1430 from the 85th Texas Legislative Session, 2017.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required for the first five-year period the proposed rules are in effect because the proposed rules are required by state law and do not adversely affect a small or micro-business for the first five years that the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, limit, or repeal existing regulations but it does streamline the contested case hearing process for certain amendments to a water right by applicants that begin to use desalinated seawater and delete an obsolete rule provision. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to enhance the encouragement of the development and use of desalinated seawater as a water management strategy through the implementation of an expedited water right permitting process which has the potential to result in a positive impact on the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking under Texas Government Code, §2001.0225, "Regulatory Analysis of Major Environmental Rules," and determined that this rulemaking is

not a "major environmental rule." The Legislature in 2013 enacted HB 1600 and SB 567, both of which amended TWC, §5.311(a). HB 1600 and SB 567 transferred from the TCEQ to the PUC the functions relating to the economic regulation of water and sewer utilities. HB 1600 and SB 567 amended TWC, §5.311(a) as it relates to the commission's authority to delegate to an ALJ of SOAH the responsibility to issue interlocutory orders related to interim rates under TWC, Chapter 13. This rulemaking implements the change in TWC, §5.311(a).

The Legislature in 2017 enacted HB 3735 and SB 1430, both of which amend Texas Government Code, §2003.047. HB 3735 and SB 1430 require the TCEQ to provide an expedited procedure for acting on certain applications for an amendment to a water right by certain applicants that use desalinated seawater. HB 3735, Section 6, and SB 1430, Section 2, amend Texas Government Code, §2003.047 to add that for amendments governed by new TWC, §11.122(b-1), the PFD must be prepared no more than 270 days after the date the application is referred to SOAH. This rulemaking implements that statute.

In 2015, the Legislature enacted HB 2031, creating TWC, Chapter 18, which relates to marine seawater desalination, and HB 4097, creating TWC, §11.1405, relating to seawater desalination projects for industrial purposes. HB 2031 stated that the purpose of the new law was to remain economically competitive in order to secure and develop plentiful and cost-effective water supplies to meet the ever-increasing demand for water. The Legislature also stated that in this state, marine seawater is a potential new source of water for drinking and other beneficial uses, and that this state has access to vast quantities of marine seawater from the Gulf of Mexico. The Legislature stated the purpose of HB 2031 was to "...

streamline the regulatory process for and reduce the time required for and cost of marine seawater."

The purpose of the rulemaking is not "to protect the environment or reduce risks to human health from environmental exposure," in a way that may "adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." Texas Government Code, §2001.0225(g)(3). The specific intent of the rulemaking is to expedite the contested case hearing process for amendments to change diversion points when the holder of the water right begins using desalinated seawater and to delete obsolete §80.4(c)(15) relating to the economic regulation of water and sewer utilities. Expediting the contested case hearing process is intended to encourage the use of desalinated water. The rulemaking expedites the contested case hearing process by placing a time limit on the preparation of a PFD at SOAH in contested cases of these amendments. As stated in HB 2031 (84th Texas Legislature, 2015), expediting the use of desalinated seawater supports development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water and to streamline the process for these permits.

Even if this rulemaking was a "major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225, for the requirement to prepare a full Regulatory Impact Analysis. This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being proposed solely under the TCEQ's general rulemaking authority. This

rulemaking is being proposed to implement specific state statutes enacted in HB 1600 and SB 567 from the 83rd Texas Legislature, 2013 and HB 3735 and SB 1430 from the 85th Texas Legislature, 2017.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed analysis of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007 (*See Texas Government Code, §2001.0225(g)(3)*).

The specific purpose of these proposed rules is to encourage the development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water by expediting the contested case hearing process for amendments to change diversion points when the holder of the water right begins using desalinated seawater and delete obsolete §80.4(c)(15) relating to the economic regulation of water and sewer utilities as those functions have transferred from the TCEQ to the PUC. In 2015, the Legislature enacted requirements for expedited permitting for the diversion or transport of marine seawater under TWC, Chapter 18, and the diversion of seawater for industrial purposes under TWC, §11.1405.

These proposed rules would substantially advance this stated purpose by providing time limits on the preparation of PFDs in contested cases for amendments to change diversion points when the holder of the water right begins using desalinated seawater.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules because these rules do not impact private real property. This rulemaking deletes §80.4(c)(15) and adds an expedited contested case hearing for amendments to change diversion points when the holder of the water right begins using desalinated seawater. The deletion of §80.4(c)(15) is required due to the transfer of functions relating to the economic regulation of water and sewer utilities from the TCEQ to the PUC pursuant to HB 1600 and SB 567 from the 83rd Texas Legislature, 2013. The intent is to delete obsolete §80.4(c)(15) relating to the economic regulation of water and sewer utilities. Further, the changes to Chapter 80 provide that for these types of amendments, if there is a contested case, the ALJ must prepare a PFD no more than 270 days after the application is referred to SOAH and implement Texas Government Code, §2003.047. These amended rules are procedural in nature. The deletion of §80.4(c)(15) and this expedited contested case hearing process for these amendments does not impact private real property rights.

Even if the rules were to impact real property rights, the commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules or the prior rules relating to the use of desalinated seawater are actions taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance

the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). Lack of water for drinking and other essential purposes would be a health and safety crisis. This rulemaking could help to provide more drinking water and water for other essential purposes. There will be no or very minimal burden on private real property rights because of the amount of water in the Gulf of Mexico, or a bay or arm of the Gulf of Mexico. For marine seawater, there are no permanent water rights, real property rights, that have been granted for use of the water in the Gulf of Mexico. For seawater in a bay or arm of the Gulf of Mexico, very few water rights have been granted for this water. Diversions of seawater in a bay or arm of the Gulf of Mexico are also limited to industrial water. Water for municipal and domestic needs will not be taken from this part of the Gulf of Mexico.

In addition, the commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the deletion of §80.4(c)(15) based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed deletion of §80.4(c)(15) is a discontinuance of the economic regulation of water and sewer utilities within the TCEQ, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Because the proposed deletion of §80.4(c)(15) falls within an exception under Texas Government Code, §2007.003(b)(5), Texas Government Code, Chapter 2007 does not apply to the proposed deletion of §80.4(c)(15).

Thus, Texas Government Code, Chapter 2007, does not apply to these proposed rules

because these rules do not impact private real property, there is a public health and safety need for the rules, and the deletion of §80.4(c)(15) falls within an exception under Texas Government Code, §2007.003(b)(5).

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposed amendment to Chapter 80 implements changes to the TCEQ contested case hearing process required by HB 3735 and SB 1430 from the 85th Texas Legislature, 2017 may be subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. In reviewing the proposed deletion of §80.4(c)(15) required by HB 1600 and SB 567 from the 83rd Texas Legislature, 2013, the commission found that the proposed deletion is neither identified in the Coastal Coordination Act Implementation rules, 31 TAC §505.11(b)(2) or (4) nor will the deletion affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed deletion of §80.4(c)(15) is not subject to the CMP. The commission conducted a consistency determination for the proposed amendment to Chapter 80 implementing changes to the TCEQ contested case hearing process required by HB 3735 and SB 1430 from the 85th Texas Legislature, 2017 in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

Although the proposed rulemaking to implement HB 3735 and SB 1430 from the 85th Texas

Legislature, 2017 is procedural, the rulemaking relates to prior rules that expedite permitting for diverting desalinated seawater. CMP goals applicable to the proposed rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rules include those contained in 31 TAC §501.33(a). The proposed rules implement HB 3735 and SB 1430, which encourage diversions of desalinated seawater by placing a time limit on preparation of a PFD from SOAH in contested cases for amendments to add diversion points to a surface water right when the applicant begins using desalinated seawater. In 2015 in HB 2031, the Legislature found concerning the desalination rules "...that it is necessary and appropriate to grant authority and provide for expedited and streamlined authorization for marine seawater desalination facilities, consistent with appropriate environmental and water right protections, ..." Since one of the purposes of the desalination rules is to protect coastal natural resources, these proposed rules which provide an incentive for applicants to begin using desalinated seawater in lieu of their existing surface water, are consistent with the CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any CNRAs, and because one of the purposes of the proposed rules is to protect coastal and natural resources.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 20, 2018, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

<http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project

Number 2017-034-295-OW. The comment period closes on March 26, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at

http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact

Ross Henderson, Water Availability Division, at (512) 239-4735.

SUBCHAPTER A: GENERAL RULES

§80.4

Statutory Authority

This amendment to the rule is proposed under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105 concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1), concerning the TCEQ's authority over water and water rights; TWC, Chapter 18, concerning Marine Seawater Desalination Projects; TWC, §11.1405, concerning Desalination of Seawater for the Use of Industrial Purposes; and TWC, §11.122, relating to water rights amendments. This amendment is also proposed under Texas Government Code, §2003.047(e-3) and (e-6), relating to hearings for TCEQ.

The amendment to the rule implements House Bill (HB) 1600 and Senate Bill (SB) 567 (83rd Texas Legislature, 2013), concerning the transfer from the TCEQ to the Public Utility Commission of Texas the functions relating to the economic regulation of water and sewer utilities and HB 3735 and SB 1430 (85th Texas Legislature, 2017) and Texas Government Code, §2003.047(e-3) and (e-6), concerning referrals for contested case hearings to the State Office of Administrative Hearings.

§80.4. Judges.

(a) Applicability and delegation is as follows:

(1) Any application that is declared administratively complete on or after September 1, 1999, is subject to this section.

(2) The commission delegates to the State Office of Administrative Hearings [(SOAH)] the authority to conduct hearings designated by the commission.

(b) The chief administrative law judge will assign judges to hearings. When more than one judge is assigned to a hearing, one of the judges will be designated as the presiding judge and shall resolve all procedural questions. Evidentiary questions will ordinarily be resolved by the judge sitting in that phase of the case, but may be referred by that judge to the presiding judge.

(c) Judges shall have authority to:

(1) set hearing dates;

(2) convene the hearing at the time and place specified in the notice for the hearing;

(3) establish the jurisdiction of the commission;

(4) rule on motions and on the admissibility of evidence and amendments to pleadings;

(5) designate and align parties and establish the order for presentation of evidence, except that the executive director and the public interest counsel shall not be aligned with any other party;

(6) examine and administer oaths to witnesses;

(7) issue subpoenas to compel the attendance of witnesses, or the production of papers and documents;

(8) authorize the taking of depositions and compel other forms of discovery;

(9) set prehearing conferences and issue prehearing orders;

(10) ensure that information and testimony are introduced as conveniently and expeditiously as possible, including limiting the time of argument and presentation of evidence and examination of witnesses without unfairly prejudicing any rights of parties to the proceeding;

(11) limit testimony to matters under the commission's jurisdiction;

(12) continue any hearing from time to time and from place to place;

(13) reopen the record of a hearing, before a proposal for decision is issued, for additional evidence where necessary to make the record more complete;

(14) impose appropriate sanctions;

[(15) issue interim rate orders under Texas Water Code, Chapter 13;]

(15) [(16)] consider additional issues beyond the list referred by the commission when:

(A) the issues are material;

(B) the issues are supported by evidence; and

(C) there are good reasons for the failure to supply available information regarding the issues during the public comment period;

(16) [(17)] for permit applications filed before September 1, 2015, or applications not referred under Texas Water Code (TWC), §5.556 or §5.557, extend the proceeding beyond the maximum expected completion date if:

(A) the judge determines that failure to grant an extension would deprive a party of due process or another constitutional right; or

(B) by agreement of the parties;

(17) [(18)] for permit applications filed on or after September 1, 2015, and referred under TWC [Texas Water Code], §5.556 or §5.557, extend the proceeding beyond 180 days after the first day of the preliminary hearing or on an earlier date specified by the commission if:

(A) the judge determines that failure to grant an extension would unduly deprive a party of due process or another constitutional right; or

(B) by agreement of the parties with approval of the judge; and

(18) for permit applications filed on or after September 1, 2017, under TWC, §11.122(b-1), extend the proceeding beyond 270 days after the first day of the preliminary hearing or on an earlier date specified by the commission if:

(A) the judge determines that failure to grant an extension would unduly deprive a party of due process or another constitutional right; or

(B) by agreement of the parties with the approval of the judge; and

(19) exercise any other appropriate powers necessary or convenient to carry out his responsibilities.

(d) For the purposes of subsection (c)~~(16)~~, (17) and (18) of this section, a political subdivision has the same constitutional rights as an individual.

SUBCHAPTER F: POST HEARING PROCEDURES

§80.252

Statutory Authority

This amendment to the rule is proposed under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105 concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1) concerning the commission's authority over water and water rights; TWC, Chapter 18, concerning Marine Seawater Desalination Projects; TWC, §11.1405, concerning Desalination of Seawater for the Use of Industrial Purposes; and, TWC, §11.122, relating to water rights amendments. This amendment is also proposed under Texas Government Code, §2003.047(e-3) and (e-6), relating to hearings for TCEQ.

The amendment to the rule implements House Bill 3735 and Senate Bill 1430 (85th Texas Legislature, 2017) and Texas Government Code, §2003.047(e-3) and (e-6), concerning referrals for contested case hearings to the State Office of Administrative Hearings.

§80.252. Judge's Proposal for Decision.

(a) Any application that is declared administratively complete on or after September 1, 1999, is subject to this section.

(b) Judge's proposal for decision regarding an application filed before September 1, 2015, [or] applications not referred under Texas Water Code (TWC), §5.556 or §5.557, or applications not subject to TWC, §11.122(b-1). After closing the hearing record, the judge shall file a written proposal for decision with the chief clerk no later than the end of the maximum expected duration set by the commission and shall send a copy by certified mail to the executive director and to each party.

(c) Judge's proposal for decision regarding an application filed on or after September 1, 2015, and referred under TWC [Texas Water Code], §5.556 or §5.557. After closing the hearing record, the judge shall file a written proposal for decision with the chief clerk no later than 180 days after the first day of the preliminary hearing, the date specified by the commission, or the date to which the deadline was extended pursuant to Texas Government Code, §2003.047(e-3). Additionally, the judge shall send a copy by certified mail to the executive director and to each party.

(d) Judge's proposal for decision regarding an application filed on or after September 1, 2017, and subject to TWC, §11.122(b-1). After closing the hearing record, the judge shall file a written proposal for decision with the chief clerk no later than 270 days after the first day of the preliminary hearing, the date specified by the commission, or the date to which the deadline was extended pursuant to Texas Government Code, §2003.047(e-3).
Additionally, the judge shall send a copy by certified mail to the executive director and to each party.

(e) [(d)] Proposal for decision: adverse to a party. A proposal for decision shall be filed by the judge who conducted the hearing or by a substitute judge who has read the record. If the proposal for decision is adverse to a party to the proceeding, it shall contain a statement of the reasons for the proposal as well as findings of fact and conclusions of law which support the proposal on any issue referred by the commission or added by the judge. If any party has filed proposed findings of fact upon the judge's request, the judge shall include with the proposal for decision recommended rulings on all findings of fact so proposed. Where more than one judge has been assigned to hear a particular proceeding, the presiding judge will issue the proposal for decision and the other assigned judge or judges may file comments.

(f) [(e)] Proposal for decision: not adverse to any party. If the proposal for decision is not adverse to any party to the proceeding, the judge may informally dispose of the matter by proposing to the commission an order which need not contain findings of fact, conclusions of law, or reasons for the proposal. If the proposal for decision is not adverse to any party and a permit is to be issued, the judge need not propose an order to the commission.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §288.1 and §288.30.

Background and Summary of the Factual Basis for the Proposed Rules

In 2017, the 85th Texas Legislature passed House Bill (HB) 1648. HB 1648 relates to the designation of a water conservation coordinator by a retail public water utility to implement a water conservation plan. Under current law, retail public utilities that provide potable water service to 3,300 or more connections are required to submit a water conservation plan to the executive administrator of the Texas Water Development Board (Board). According to TCEQ rules, a plan must be submitted to the Board starting May 1, 2009, and every five years thereafter, and the plan must comply with the minimum requirements established in the Board's rules. The Board is required to notify the TCEQ if the Board determines an entity has not complied with the plans or submission of plans and the commission will take appropriate enforcement action.

HB 1648 added provisions under Texas Water Code (TWC), §13.146, for the TCEQ to require retail public utilities that provide potable water to 3,300 or more connections to: 1) designate a person as the water conservation coordinator responsible for implementing the water conservation plan; and 2) identify, in writing, the water conservation coordinator to the executive administrator of the Board.

This rulemaking proposes amendments to §288.1 and §288.30 to include the requirements specified in HB 1648. This rulemaking under HB 1648 proposes to add provisions requiring

retail public utilities that provide potable water to 3,300 or more connections to: 1) designate a person as the water conservation coordinator responsible for implementing the water conservation plan; and 2) identify, in writing, the water conservation coordinator to the executive administrator of the Board.

In September 2017, the commission held a stakeholder meeting to solicit comments regarding the implementation of HB 1648, HB 3735, Senate Bill (SB) 864, and SB 1430 (85th Texas Legislature, 2017). The executive director based these proposed rules on consideration of the legislation and consideration of comments received from the stakeholders.

In corresponding rulemakings published in this issue of the *Texas Register*, the commission also proposes new and amended sections in 30 TAC Chapter 80, Contested Case Hearings; 30 TAC Chapter 295, Water Rights, Procedural; and 30 TAC Chapter 297, Water Rights, Substantive to implement HB 3735, SB 864, and SB 1430.

Section by Section Discussion

§288.1, Definitions

Section 288.1 defines words and terms used within Chapter 288. The commission proposes nonsubstantive amendments to reorganize definitions in order to maintain alphabetical order. The commission also proposes to add a definition for "Water conservation coordinator" in proposed §288.1(23). Adding the definition to this section will provide clarification to applicable retail public water suppliers when designating a water

conservation coordinator because it specifies that this person is responsible for implementation of the entity's water conservation plan. Additionally, the commission proposes to renumber the subsequent paragraphs accordingly.

§288.30, Required Submittals

Section 288.30 outlines the requirements for water conservation plan and drought contingency plan submittals. The commission proposes to modify §288.30(10) by adding subparagraph (B) in order to implement HB 1648. The commission proposes §288.30(10)(B), to require that retail public suppliers that provide potable water to 3,300 or more connections designate a person as the water conservation coordinator responsible for implementing the water conservation plan and identify, in writing, the water conservation coordinator, including contact information for that person, to the executive administrator of the Board. In addition, the commission proposes that notification of the initial designated water conservation coordinator be provided as specified by the Board and any changes to the water conservation coordinator be provided within 90 days of the effective date of the change. The commission proposes to re-letter the subsequent subparagraphs accordingly.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are expected for the agency or for other units of state or local government.

The proposed rulemaking would implement HB 1648 and require a retail public water

supplier with 3,300 or more connections to designate a person as their water conservation coordinator. This water conservation coordinator would be responsible for implementing their water conservation plan. The retail public water supplier must also provide in writing to the executive administrator of the Board, the name and contact information of the designated water conservation coordinator, and notify the Board of any change regarding the designated water conservation coordinator within 90 days of the effective date of the change.

It is estimated that there are approximately 350 retail public water suppliers with 3,300 or more connections that would be affected by the proposed rules. Of these, it is estimated that nearly all of them are owned or operated by local governments. TCEQ would be responsible for enforcement action against utilities that do not comply with the requirements when informed by the Board, but it is assumed that public water suppliers would be in compliance and therefore no significant fiscal implications are expected for the TCEQ. Under current TCEQ rules retail public utilities that provide potable public water service to 3,300 or more connections are already required to submit water conservation plans to the TCEQ and to the Board. Designating a water conservation coordinator to implement the water conservation plans is not expected to result in significant changes to policies and procedures for affected utilities or the Board, and therefore no significant fiscal implications are expected for local governments or the Board as a result of the implementation of the proposed rules.

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be effective implementation of water conservation plans by retail public water utilities resulting in more efficient use of water in times of drought.

No fiscal implications are anticipated for businesses or individuals as a result of the implementation or administration of the proposed rules. Of the estimated 350 retail public water suppliers with 3,300 or more connections that would be affected by the proposed rules very few, if any, are privately owned. For those that are privately owned, because they are already required to submit water conservation plans, designating a water conservation coordinator to implement the plans is not expected to result in significant changes to policies and procedures for affected utilities and therefore no significant fiscal implications are expected as a result of the implementation of the proposed rules.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed

rules do not adversely affect any rural community in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect for retail public water suppliers in rural communities as for those in urban communities. The proposed rules are necessary in order to implement HB 1648.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. It is not known how many of the privately-owned retail public water suppliers would be small or micro-businesses. For those that are small or micro-businesses, designating a water conservation coordinator is not expected to result in significant changes to policies and procedures for affected utilities and therefore no significant fiscal implications are expected as a result of the implementation of the proposed rules. The proposed rules are required in order to implement HB 1648.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required for the first five-year period the proposed rules are in effect because the proposed rules are required by state law and do not adversely affect a small or micro-business for the first five years that the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this

proposed rulemaking. The proposed rulemaking does not create or eliminate a government program. The creation of the water conservation coordinator employee position within retail public water suppliers with 3,300 or more connections is required by HB 1648 and is not a result of this rulemaking. The proposed rulemaking will not require an increase or decrease in future legislative appropriations to the agency, nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does create a new regulation in that it will require a retail public water supplier with 3,300 or more connections to designate a person as the water conservation coordinator responsible for implementing their water conservation plan as well as identify, in writing, the water conservation coordinator to the executive administrator of the Board. For this reason, the proposed rules also expand an existing regulation as the submission of water conservation plans is already required. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to enhance the protection of public health and safety from the effects of drought and any cost for compliance is not expected to be significant.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking under Texas Government Code, §2001.0225, "Regulatory Analysis of Major Environmental Rules," and determined that this rulemaking is not a "major environmental rule." HB 1648 was enacted to require that a retail public utility

have a water conservation coordinator to implement its water conservation plan. This is a procedural requirement with the specific intent to aid the retail public utility in implementing its water conservation plan in order to have a more efficient plan. Therefore, the purpose of the rulemaking is not "to protect the environment or reduce risks to human health from environmental exposure," in a way that may "adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." The specific intent of this rulemaking is not to protect the environment or reduce risks to human health from environmental exposures (*see* Texas Government Code, §2001.0225(g)(3)).

Even if this rulemaking was a "major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being proposed solely under the TCEQ's general rulemaking authority. This rulemaking is being proposed to implement specific state statute enacted in HB 1648.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed analysis of whether these

proposed rules constitute a takings under Texas Government Code, Chapter 2007 (*see* Texas Government Code, §2001.0225(g)(3)).

The specific purpose of these proposed rules is to implement HB 1648 which requires that a retail public utility providing potable water service to 3,300 or more connections designate a water conservation coordinator responsible for implementing the water conservation plan and identify that person to the executive administrator of the Board. The intent is to aid the retail public utility in implementing its water conservation plan in order to have a more efficient plan.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules because these rules do not impact private real property. The requirement is that a retail public utility designate a water conservation coordinator to implement the water conservation plan. This designation will not impact real property.

If it could be argued that this action constitutes a taking, the action would be exempt from the requirements of Texas Government Code, Chapter 2007, Subchapter C, because under Texas Government Code, §2007.003(13) this is an action that is taken in response to a real and substantial threat to public health and safety, is designed to significantly advance the health and safety purpose, and does not impose a greater burden than is necessary to achieve the health and safety purpose. Conservation of water is important in order to have adequate drinking water and water for other purposes.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 20, 2018, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the

hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

<http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2017-034-295-OW. The comment period closes on March 26, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at

http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Leslie Patterson, Water Rights Permitting and Availability Section, at (512) 239-6655.

SUBCHAPTER A: WATER CONSERVATION PLANS

§288.1

Statutory Authority

This amendment to the rule is proposed under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105 concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; and TWC, §5.013(a)(1), concerning the commission's authority over water and water rights. This amendment is also proposed under TWC, §13.146, concerning water conservation plans.

The amendment to the rule implements House Bill 1648 (85th Texas Legislature, 2017) and TWC, §13.146(1) - (3), which relates to the requirement for retail public utility to have a water conservation coordinator.

§288.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Agricultural or Agriculture--Any of the following activities:

(A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;

(B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or non-soil media by a nursery grower;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(D) raising or keeping equine animals;

(E) wildlife management; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(2) Agricultural use--Any use or activity involving agriculture, including irrigation.

(3) Best management practices--Voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

(4) Conservation--Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(5) Commercial use--The use of water by a place of business, such as a hotel, restaurant, or office building. This does not include multi-family residences or agricultural, industrial, or institutional users.

(6) Drought contingency plan--A strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies. A drought contingency plan may be a separate document identified as such or may be contained within another water management document(s).

(7) Industrial use--The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, and the development of power by means other than hydroelectric, but does not include agricultural use.

(8) Institutional use--The use of water by an establishment dedicated to public service, such as a school, university, church, hospital, nursing home, prison, or government facility. All facilities dedicated to public service are considered institutional regardless of ownership.

(9) Irrigation--The agricultural use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water from a public water supplier.

(10) Irrigation water use efficiency--The percentage of that amount of irrigation water which is beneficially used by agriculture crops or other vegetation relative to the amount of water diverted from the source(s) of supply. Beneficial uses of water for irrigation purposes include, but are not limited to, evapotranspiration needs for vegetative maintenance and growth, salinity management, and leaching requirements associated with irrigation.

(11) Mining use--The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field re-pressuring.

(12) Municipal use--The use of potable water provided by a public water supplier as well as the use of sewage effluent for residential, commercial, industrial, agricultural, institutional, and wholesale uses.

(13) Nursery grower--A person engaged in the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, who grows more than 50% of the products that the person either sells or leases, regardless of the variety sold, leased, or grown. For the purpose of this definition, grow means the actual cultivation or propagation of the product beyond the mere holding or maintaining of the item prior to sale or lease, and typically includes activities associated with the production or multiplying of stock such as the development of new plants from cuttings, grafts, plugs, or seedlings.

(14) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) Public water supplier--An individual or entity that supplies water to the public for human consumption.

(16) Regional water planning group--A group established by the Texas Water Development Board to prepare a regional water plan under Texas Water Code, §16.053.

[(16) Residential use--The use of water that is billed to single and multi-family residences, which applies to indoor and outdoor uses.]

(17) Residential gallons per capita per day--The total gallons sold for residential use by a public water supplier divided by the residential population served and then divided by the number of days in the year.

(18) Residential use--The use of water that is billed to single and multi-family residences, which applies to indoor and outdoor uses.

[(18) Regional water planning group--A group established by the Texas Water Development Board to prepare a regional water plan under Texas Water Code, §16.053.]

(19) Retail public water supplier--An individual or entity that for compensation supplies water to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its employees or tenants when that water is not resold to or used by others.

(20) Reuse--The authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

(21) Total use--The volume of raw or potable water provided by a public water supplier to billed customer sectors or nonrevenue uses and the volume lost during conveyance, treatment, or transmission of that water.

(22) Total gallons per capita per day (GPCD)--The total amount of water diverted and/or pumped for potable use divided by the total permanent population divided by the days of the year. Diversion volumes of reuse as defined in this chapter shall be credited against total diversion volumes for the purposes of calculating GPCD for targets and goals.

(23) Water conservation coordinator--The person designated by a retail public utility that is responsible for implementing a water conservation plan.

(24) [(23)] Water conservation plan--A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate document identified as such or may be contained within another water management document(s).

(25) [(24)] Wholesale public water supplier--An individual or entity that for compensation supplies water to another for resale to the public for human consumption. The term does not include an individual or entity that supplies water to itself or its

employees or tenants as an incident of that employee service or tenancy when that water is not resold to or used by others, or an individual or entity that conveys water to another individual or entity, but does not own the right to the water which is conveyed, whether or not for a delivery fee.

(26) [(25)] Wholesale use--Water sold from one entity or public water supplier to other retail water purveyors for resale to individual customers.

SUBCHAPTER C: REQUIRED SUBMITTALS

§288.30

Statutory Authority

This amendment to the rule is proposed under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105 concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; and TWC, §5.013(a)(1), concerning the commission's authority over water and water rights.

The rule implements House Bill 1648 (85th Texas Legislature, 2017) and TWC, §13.146(2) and (3), which relate to the requirement for retail public utility to have a water conservation coordinator.

§288.30. Required Submittals.

In addition to the water conservation and drought contingency plans required to be submitted with an application under §295.9 of this title (relating to Water Conservation and Drought Contingency Plans), water conservation and drought contingency plans are required as follows.

(1) Water conservation plans for municipal, industrial, and other non-irrigation uses. The holder of an existing permit, certified filing, or certificate of adjudication for the

appropriation of surface water in the amount of 1,000 acre-feet a year or more for municipal, industrial, and other non-irrigation uses shall develop, submit, and implement a water conservation plan meeting the requirements of Subchapter A of this chapter (relating to Water Conservation Plans). The water conservation plan must be submitted to the executive director not later than May 1, 2005. Thereafter, the next revision of the water conservation plan for municipal, industrial, and other non-irrigation uses must be submitted not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any revised plans must be submitted to the executive director within 90 days of adoption. The revised plans must include implementation reports. The requirement for a water conservation plan under this section must not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(2) Implementation report for municipal, industrial, and other non-irrigation uses. The implementation report must include:

(A) the list of dates and descriptions of the conservation measures implemented;

(B) data about whether or not targets in the plans are being met;

(C) the actual amount of water saved; and

(D) if the targets are not being met, an explanation as to why any of the targets are not being met, including any progress on that particular target.

(3) Water conservation plans for irrigation uses. The holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 10,000 acre-feet a year or more for irrigation uses shall develop, submit, and implement a water conservation plan meeting the requirements of Subchapter A of this chapter. The water conservation plan must be submitted to the executive director not later than May 1, 2005. Thereafter, the next revision of the water conservation plan for irrigation uses must be submitted not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any revised plans must be submitted to the executive director within 90 days of adoption. The revised plans must include implementation reports. The requirement for a water conservation plan under this section must not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.

(4) Implementation report for irrigation uses. The implementation report must include:

(A) the list of dates and descriptions of the conservation measures implemented;

(B) data about whether or not targets in the plans are being met;

(C) the actual amount of water saved; and

(D) if the targets are not being met, an explanation as to why any of the targets are not being met, including any progress on that particular target.

(5) Drought contingency plans for retail public water suppliers. Retail public water suppliers shall submit a drought contingency plan meeting the requirements of Subchapter B of this chapter (relating to Drought Contingency Plans) to the executive director after adoption by its governing body. The retail public water system shall provide a copy of the plan to the regional water planning group for each region within which the water system operates. These drought contingency plans must be submitted as follows.

(A) For retail public water suppliers providing water service to 3,300 or more connections, the drought contingency plan must be submitted to the executive director not later than May 1, 2005. Thereafter, the retail public water suppliers providing water service to 3,300 or more connections shall submit the next revision of the plan not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any revised plans must be submitted to the executive director within 90 days of adoption by the community water system. Any new retail public water suppliers providing water service to 3,300 or more connections shall prepare and adopt a drought contingency plan within 180 days of commencement of operation, and submit the plan to the executive director within 90 days of adoption.

(B) For all the retail public water suppliers, the drought contingency plan must be prepared and adopted not later than May 1, 2005, and must be available for inspection by the executive director upon request. Thereafter, the retail public water suppliers shall prepare and adopt the next revision of the plan not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any new retail public water supplier providing water service to less than 3,300 connections shall prepare and adopt a drought contingency plan within 180 days of commencement of operation, and shall make the plan available for inspection by the executive director upon request.

(6) Drought contingency plans for wholesale public water suppliers. Wholesale public water suppliers shall submit a drought contingency plan meeting the requirements of Subchapter B of this chapter to the executive director not later than May 1, 2005, after adoption of the drought contingency plan by the governing body of the water supplier. Thereafter, the wholesale public water suppliers shall submit the next revision of the plan not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any new or revised plans must be submitted to the executive director within 90 days of adoption by the governing body of the wholesale public water supplier. Wholesale public water suppliers shall also provide a copy of the drought contingency plan to the regional water planning group for each region within which the wholesale water supplier operates.

(7) Drought contingency plans for irrigation districts. Irrigation districts shall submit a drought contingency plan meeting the requirements of Subchapter B of this chapter to the executive director not later than May 1, 2005, after adoption by the governing body of the irrigation district. Thereafter, the irrigation districts shall submit the next revision of the plan not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any new or revised plans must be submitted to the executive director within 90 days of adoption by the governing body of the irrigation district. Irrigation districts shall also provide a copy of the plan to the regional water planning group for each region within which the irrigation district operates.

(8) Additional submissions with a water right application for state water. A water conservation plan or drought contingency plan required to be submitted with an application in accordance with §295.9 of this title must also be subject to review and approval by the commission.

(9) Existing permits. The holder of an existing permit, certified filing, or certificate of adjudication shall not be subject to enforcement actions nor shall the permit, certified filing, or certificate of adjudication be subject to cancellation, either in part or in whole, based on the nonattainment of goals contained within a water conservation plan submitted with an application in accordance with §295.9 of this title or by the holder of an existing permit, certified filing, or certificate of adjudication in accordance with the requirements of this section.

(10) Submissions to the executive administrator of the Texas Water Development Board.

(A) Water conservation plans for retail public water suppliers. For retail public water suppliers providing water service to 3,300 or more connections, a water conservation plan meeting the minimum requirements of Subchapter A of this chapter and using appropriate best management practices must be developed, implemented, and submitted to the executive administrator of the Texas Water Development Board not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group. Any revised plans must be submitted to the executive administrator within 90 days of adoption by the community water system. Any new retail public water suppliers providing water service to 3,300 or more connections shall prepare and adopt a water conservation plan within 180 days of commencement of operation, and submit the plan to the executive administrator of the Texas Water Development Board within 90 days of adoption.

(B) Water conservation coordinators for retail public water suppliers. Retail public water suppliers that provide potable water to 3,300 or more connections shall designate a person as the water conservation coordinator responsible for implementing the water conservation plan; and identify, in writing, the water conservation coordinator, including the contact information for that person, to the executive administrator of the Texas Water Development Board. Notification of the initial designated water conservation coordinator shall be provided as specified by the Texas Water Development Board and any

changes to the water conservation coordinator shall be provided within 90 days of the effective date of the change.

(C) [(B)] Water conservation plans. Each entity that is required to submit a water conservation plan to the commission shall submit a copy of the plan to the executive administrator of the Texas Water Development Board not later than May 1, 2009, and every five years after that date to coincide with the regional water planning group.

(D) [(C)] Annual reports. Each entity that is required to submit a water conservation plan to the Texas Water Development Board or the commission, shall file a report not later than May 1, 2010, and annually thereafter to the executive administrator of the Texas Water Development Board on the entity's progress in implementing the plan.

(E) [(D)] Violations of the Texas Water Development Board's rules. The water conservation plans and annual reports shall comply with the minimum requirements established in the Texas Water Development Board's rules. The Texas Water Development Board shall notify the commission if the Texas Water Development Board determines that an entity has not complied with the Texas Water Development Board rules relating to the minimum requirements for water conservation plans or submission of plans or annual reports. The commission shall take appropriate enforcement action upon receipt of notice from the Texas Water Development Board.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§295.73, 295.121, and 295.122; repeal of §§295.121 - 295.126; and amendments to §§295.151 - 295.153.

Background and Summary of the Factual Basis for the Proposed Rules

In 2017, the 85th Texas Legislature passed House Bill (HB) 3735, Senate Bill (SB) 864, and SB 1430, which all became effective on September 1, 2017. SB 1430 amended the Texas Water Code (TWC) to require that the TCEQ provide an expedited procedure for acting on certain applications for an amendment to a water right by applicants that begin to use desalinated seawater. New TWC, §11.122(b-1), provides that an applicant has a right, under specified circumstances, to expedited consideration of an application to change the diversion point for their existing non-saline surface water right when the applicant begins using desalinated seawater. New TWC, §11.122(b-2), further requires the executive director or the commission to prioritize the technical review of such an application over the technical review of other applications that are not subject to TWC, §11.122(b-1).

HB 3735 includes the same provisions described in SB 1430, which were added to HB 3735 in a Senate Committee Substitute. HB 3735 additionally amended TWC, §11.125, to replace specific map requirements in TWC, §11.125(a) with a more general requirement to submit maps in the form prescribed by the commission and removed additional specific map requirements by repealing TWC, §11.125(b) and (c).

SB 864 amended the TWC as it relates to the procedure for obtaining a right to use state

water if the applicant proposes an alternative source of water that is not state water. The bill amends notice requirements relating to alternate sources of water used in water rights applications. Amended TWC, §11.132(c) and §11.143(e), require that the notice of an application under those sections identify any proposed alternative sources of water. Amended TWC, §11.132(d) and §11.143(f), require that the commission provide mailed notice of an application to any groundwater conservation district (GCD) with jurisdiction over groundwater production in an area from which the applicant proposes to use groundwater as an alternative source. Amended TWC, §11.143(f), requires published notice of a hearing in a newspaper of general circulation in each county in which a GCD is located for applications to use an exempt reservoir to convey groundwater under the jurisdiction of a GCD.

The commission proposes amendments to Chapter 295 to implement the changes to the TCEQ water right amendment process required by HB 3735 and SB 1430, the TCEQ water rights mapping requirements required by HB 3735, and the TCEQ water right notices required by SB 864.

In September 2017, the commission held an informal stakeholder meeting to solicit comments regarding the implementation of HB 1648, HB 3735, SB 864, and SB 1430. While staff intends to strictly implement the legislation as the Legislature intended, staff did ask for input from stakeholders on the following issues: How to implement SB 1430 and HB 3735, which require the TCEQ to provide an expedited procedure for certain amendments to water rights and also requires the executive director to prioritize the technical review of

those applications over applications that are not subject to the expedited process? What should the "expedited process" look like? Is the expedited process for desalination permits in 30 TAC Chapter 295, Subchapter G, an appropriate model? What does "prioritize" mean? How does it harmonize (or not) with the priority system? Does prioritize mean to skip the line of priority? If yes, how should the commission consider/model the impacts that would not occur to water rights applications, but for the expedited applications jumping to the front of the priority line?

The second topic of interest on which staff asked for input relates to the new mailed and published notice requirements to GCDs and their areas required in SB 864. A strict reading of the bill appears to only require mailed notice to a GCD and published notice in the GCD area for an application under TWC, §11.143, that uses groundwater under the jurisdiction of a GCD as an alternate source. New TWC, §11.132(d)(2)(B), also appears to require mailed notice to a GCD of a new appropriation which uses groundwater under the jurisdiction of the GCD as an alternate source to support the application. Since the bill became effective September 1, 2017, the executive director has put in place procedures to accomplish all of these notice requirements. During the stakeholder meeting, staff requested input on these new notice requirements in other instances. Specifically, did the Legislature intend to expand the published notice requirement in TWC, §11.132(d)(3) to include publishing in a newspaper of general circulation in the area of the GCD (assuming they might be different than the project area in some instances)? Should the new mailed and/or published notice requirements apply to new bed and banks authorizations under TWC, §11.042(c), which use groundwater under the jurisdiction of a GCD? Current TCEQ rule, §295.161, requires

downstream mailed notice, but does not require any published notice.

The executive director based these proposed rules on consideration of the legislation and consideration of comments received from the stakeholders.

In corresponding rulemakings published in this issue of the *Texas Register*, the commission also proposes to implement HB 1648 in amended sections in 30 TAC Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines, and Requirements; HB 3735 in 30 TAC Chapter 297, Water Rights, Substantive; and SB 1430 and HB 3735 in 30 TAC Chapter 80, Contested Case Hearings.

Section by Section Discussion

§295.73, Texas Water Code, §11.122(b-1) Amendment Applications

The commission proposes new §295.73 to implement the requirement in TWC, §11.122(b-1) as added by HB 3735 and SB 1430, which requires that the TCEQ provide expedited technical review of an application to change the diversion point for a water right holder's existing non-saline surface water right when the applicant begins using desalinated seawater and further requires the executive director or the commission to prioritize the technical review of such an application over the technical review of all other applications that are not subject to the expedited process. Proposed new §295.73(a) requires that prior to being declared administratively complete, applicants requesting expedited technical review of an amendment under §295.73 must demonstrate the amount of desalinated seawater the water right holder has begun using. This information is necessary for the commission to

determine whether the application is eligible for the expedited consideration requested.

The expedited technical review and priority mandated by SB 1430 and HB 3735 are implemented by proposed new §295.73(b) which states "Technical review for applications under this section will be completed prior to all other administratively complete applications in the basin that do not meet the requirements of this section." The expedited technical review, which prioritizes applications that meet the requirements of TWC, §11.122(b-1) over other administratively complete applications differs from the commission's current practice of processing applications in the order in which they became administratively complete. Proposed new §295.73(c) addresses the possibility that prioritizing applications under proposed new §295.73(b) over other applications that were declared administratively complete before the §295.73(b) application could result in adverse impacts to the availability of water to the applications that were not prioritized. Proposed new §295.73(c) states that "The commission may include special conditions in the permit, including, but not limited to a re-opener provision, to mitigate adverse impacts on the availability of water for applications that were administratively complete prior to an application that triggered the expedited technical review under subsection (b) of this section." The reopener provision would be invoked if an application was processed after a §295.73(b) application, despite the fact that it was administratively complete prior to the §295.73(b) application, and technical review of the application revealed that there were adverse impacts on the availability of water that would not have occurred but for the §295.73(b) application being processed first.

Division 12, Maps Plats, and Drawings Accompanying Application for Water Use Permit

The commission proposes the repeal of §§295.121 - 295.126 because HB 3735 provides for the removal of outdated mapping requirements and the replacement with more general requirements that maps must meet the requirements specified by the commission; therefore, these sections are obsolete.

§295.121, Content Requirements of Maps

The commission proposes new §295.121 to implement the more general requirements of HB 3735 that applications be accompanied by a map or plat in the form and containing the information prescribed by the commission. Proposed new §295.121 states that water right applications must include maps or plats in the form and containing the information specified in the relevant water right form and instructions for the particular authorization sought.

§295.122, Requirements for Dams and Reservoirs

The commission proposes new §295.122 which requires that maps, plats, or drawings submitted with application plans for dam and reservoir projects must include the information described in 30 TAC §299.3. This rule implements the more general requirements of HB 3735 that applications be accompanied by a map or plat in the form and containing the information prescribed by the commission.

§295.151, Notice of Application and Commission Action

The commission proposes an amendment to add a requirement as §295.151(b)(9) that

requires the notice to identify any proposed alternative source of water, other than state water, identified by the application. The subsequent paragraphs are proposed to be renumbered accordingly.

§295.152, Notice By Publication

The commission proposes to amend §295.152(a) to specify that this subsection applies to an application for a permit pursuant to TWC, §11.121, or for an amendment to a TWC, §11.121, permit, a certified filing, or a certificate of adjudication pursuant to TWC, §11.122, and §295.158(b). The commission also proposes to add subsection (b) to require that an application for a permit pursuant to TWC, §11.143, or for an amendment under TWC, §11.122, to a TWC, §11.143, permit, or a certificate of adjudication which authorizes diversions from a reservoir which is exempted under TWC, §11.142, in which the applicant proposes to use groundwater from a well located within a GCD as an alternative source of water, the applicant shall cause the notice issued by the chief clerk to be published in a newspaper of general circulation within each county in which the GCD is located. The subsequent subsection is proposed to be re-lettered.

§295.153, Notice By Mail.

For an application for a permit pursuant to TWC, §11.121, or for an amendment to a TWC, §11.121 permit, a certified filing, or a certificate of adjudication pursuant to TWC, §11.122 and §295.158(b), the commission proposes to add §295.153(b)(3) to require notice be mailed to each GCD with jurisdiction over the proposed groundwater production, if the applicant proposes to use groundwater from a well located within a GCD as an alternative source of

water. The subsequent paragraph is proposed to be renumbered.

For an application for a permit pursuant to TWC, §11.143, or for an amendment pursuant to TWC, §11.122, to a TWC, §11.143 permit, or a certificate of adjudication which authorizes diversions from a reservoir which is exempted under TWC, §11.142 and pursuant to §295.158(b), the commission proposes to add §295.153(c)(2) to require notice be mailed to each GCD with jurisdiction over the proposed groundwater production, if the applicant proposes to use groundwater from a well located within a GDC as an alternative source of water. The subsequent paragraph is proposed to be renumbered.

The commission also proposes nonsubstantive amendments to §295.153(b) - (d) to comply with Texas Register formatting requirements.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are expected for the agency or for other units of state or local government.

The proposed rulemaking would implement SB 1430 and portions of HB 3735 by providing language for an expedited procedure for certain water right applications from entities that begin to use desalinated seawater.

In addition, the proposed rulemaking implements HB 3735 by proposing to replace specific water right application map requirements with more general map requirements prescribed

by the commission.

The proposed rulemaking also implements SB 864 by requiring any water right permit application or water right permit issued by the commission to identify any alternative sources of water other than state water. In addition, pursuant to SB 864, the proposed rules require that the commission provide mailed notice of certain water right permit applications to each GCD with jurisdiction over the proposed groundwater production, if the applicant proposes to use groundwater from a well located within a GCD as an alternative source of water. The proposed rulemaking also requires published notice of a hearing in a newspaper of general circulation in each county in which a GCD is located for applications to use an exempt reservoir to convey groundwater under the jurisdiction of a GCD for applications filed pursuant to TWC, §11.143.

The proposed procedure for expedited water right applications that begin to use desalinated seawater is not expected to result in significant fiscal implications for the agency or any other unit of state government. Any local government entity could apply for a water right amendment under this expedited process. The proposed expedited permit procedure may streamline the regulatory process for amendments to water rights that fall within that process, i.e., a governmental entity that owns a surface water right and begins using desalinated seawater in lieu of using their surface water right. It is unknown how many entities will be affected because the TCEQ has no information regarding how many entities will begin using desalinated seawater in lieu of a surface water right. The cost for applying for a water rights amendment under this expedited process would be the same as the cost

of applying for an amendment under existing processes and any associated fees would be the same under this expedited procedure as they are under existing processes. Entities that file an application for an amendment pursuant to new TWC, §11.122(b-1) may experience cost savings in an undetermined amount due to the shortened period of time needed for application technical review and the expedited timeline for a contested case hearing.

The proposed mapping requirements implemented under HB 3735 simply update the mapping requirements for water rights applications. These proposed changes are not expected to have significant fiscal implications for the agency or for water rights permit applicants.

The proposed rule amendments relating to the implementation of SB 864 make minimal changes to the notice requirements of specified water rights permit applications and are not expected to result in significant fiscal implications for the agency or other units of government who may be applicants. The proposed changes may affect an entity who applies for a water right that will use water under the jurisdiction of a GCD as an alternative source. It is unknown how many entities will be affected because the TCEQ has no information regarding how many entities will make an application that is subject to the new notice requirement.

Other proposed changes make minimal changes to the notice requirements of specified water rights applications. An application subject to the new notice requirements may be required to mail notice to the affected GCD and to publish notice in a newspaper of general

circulation in the area of the GCD. The costs for increased mailed notice for applications using groundwater under the jurisdiction of a GCD are expected to be minimal (one mailed notice per application). The published notice requirement is also expected to be minimal since the existing published notice requirements (in the area of the project) will likely overlap with the new notice requirement (in the area of the GCD).

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the potential for the encouragement of the development and use of desalinated seawater as a water management strategy through the implementation of an expedited water right permitting process. In addition, the public and GCDs may benefit from increased participation in permit contested case hearings from the additional notice requirements for specified water rights permit applications.

No significant fiscal implications are anticipated for businesses or individuals as a result of the implementation or administration of the proposed rules.

The expedited amendment processes may streamline the regulatory process for amendments to water rights for an individual or business that owns a surface water right and begins using desalinated seawater in lieu of using their surface water right.

It is unknown how many entities or individuals will be affected by the expedited permit

process because the TCEQ has no information regarding the number of potential applicants that may begin using desalinated seawater in lieu of a surface water right. There may be cost savings to applicants who use the expedited permitting process due to the shortened period of time needed for technical review and contested case hearings.

An entity or individual that applies for a water right that will use water under the jurisdiction of a GCD as an alternative source may be affected. The rulemaking may require minimal changes for providing mailed and published public notice.

There may be minimal costs associated with the notice requirements for applications which use groundwater under the jurisdiction of a GCD as an alternative source. The costs for increased mailed notice for applications using groundwater under the jurisdiction of a GCD will be minimal. The published notice requirement is also expected to result in minimal costs.

It is unknown how many individuals or entities will be affected by the notice requirement because the TCEQ has no information regarding how many entities will make an application that is subject to the new notice requirement.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are

in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect any rural community in a material way for the first five years that the proposed rules are in effect. The rules would apply statewide and have the same effect in rural communities as in urban communities. The proposed rules are necessary in order to implement HB 3735, SB 1430, and SB 864.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. If a small or micro-business applies for a water right that will use water under the jurisdiction of a GCD as an alternative source, they may have minimal, insignificant costs for providing mailed and published public notice. The proposed rules are necessary in order to implement HB 3735, SB 1430, and SB 864.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required for the first five-year period the proposed rules are in effect because the proposed rules are required by state law and do not adversely affect a small or micro-business for the first five years that the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation but does expand some public notice requirements. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect it is not anticipated that there will be an adverse impact on the state's economy. The proposed rules are expected to enhance the encouragement of the development and use of desalinated seawater as a water management strategy through the implementation of an expedited water right permitting process which has the potential to result in a positive impact on the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking under Texas Government Code, §2001.0225, "Regulatory Analysis of Major Environmental Rules," and has determined that none of the rules in this rulemaking are a "major environmental rule." The Legislature in 2017 enacted HB 3735 and SB 1430, both of which amend TWC, §11.122 to add TWC, §11.122(b-1) and (b-2). HB 3735 and SB 1430 require the TCEQ to provide an expedited procedure for changing

or adding diversion points in a water right when the water right holder begins to use desalinated seawater. HB 3735 also amends TWC, §11.125 to change the map requirements in an application. This rulemaking also implements SB 864 and TWC, §11.132(c) and (d) and §11.143(e) and (f) regarding use of alternative sources of water.

In 2015, the Legislature enacted HB 2031, creating TWC, Chapter 18, which relates to marine seawater desalination, and HB 4097, creating TWC, §11.1405, relating to seawater desalination projects for industrial purposes. HB 2031 stated that the purpose of the law is to remain economically competitive in order to secure and develop plentiful and cost-effective water supplies to meet the ever-increasing demand for water. The Legislature also stated that in this state, marine seawater is a potential new source of water for drinking and other beneficial uses, and that this state has access to vast quantities of marine seawater from the Gulf of Mexico. The Legislature stated the purpose of HB 2031 was to "...streamline the regulatory process for and reduce the time required for and cost of marine seawater."

Therefore, the purpose of the rulemaking is not "to protect the environment or reduce risks to human health from environmental exposure," in a way that may "adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." The specific intent of this rulemaking is not to protect the environment or reduce risks to human health from environmental exposures (*see* Texas Government Code, §2001.0225(g)(3)). The specific intent of the rulemaking is to expedite the permitting

process for amendments to change diversion points when the holder of the water right begins using desalinated seawater and to prioritize the technical review of such amendments over other applications. This is intended to encourage the use of desalinated water. As is stated in HB 2031, expediting the use of desalinated seawater supports development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water and to streamline the process for these permits.

Concerning the amended map rules and notice rules relating to the use of an alternative source of water, these are also not "major environmental rules." The purpose of these rules is to change requirements for maps in applications, and to add additional information in notices when an applicant wants to use an alternate source of water. The rules also add some additional notice requirements. These rules are procedural in nature and are not to protect the environment or reduce risks to human health from environmental exposure.

Even if any of these rules in this rulemaking were a "major environmental rule," this rulemaking meets none of the criteria in Texas Government Code, §2001.0225, for the requirement to prepare a full Regulatory Impact Analysis. This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being proposed solely under the TCEQ's general rulemaking authority. This rulemaking is being proposed under specific state statutes enacted in HB 3735, SB 1430, and SB 864.

Written comments on the Draft Regulatory Impact Analysis Determination may be

submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed analysis of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007 (*see* Texas Government Code, §2001.0225(g)(3)).

The specific purpose of these proposed rules is to encourage the development of plentiful and cost-effective water supplies to meet the ever-increasing demand for water by expediting the process for amendments to change diversion points when the holder of the water right begins using desalinated seawater. In 2015, the Legislature added requirements for expedited permitting for the diversion or transport of marine seawater under TWC, Chapter 18, and the diversion of seawater for industrial purposes under TWC, §11.1405. The proposed rules would substantially advance this stated purpose by allowing the expedited amendments to permits to change or add diversion points when the holder of the water right begins using desalinated seawater.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules because these rules do not impact private real property. These rules only allow an expedited amendment to a water right holder to change or add diversion points when the holder begins to use desalinated seawater. These diversions at new diversion points are limited by the amount of desalinated seawater used by the holder

and the amount of water the holder was authorized to divert under the water right before the requested amendment. The water diverted from these diversion points cannot to be transferred to another basin. Therefore, this expedited amendment process does not impact private real property rights.

Even if these rules were to impact real property rights, the commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules. These rules and the prior rules relating to the use of desalinated seawater are actions taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). Lack of water for drinking and other essential purposes would be a health and safety crisis. This rulemaking could help to provide more drinking water and water for other essential purposes. There will be no or very minimal burden on private real property rights because of the amount of water in the Gulf of Mexico, or a bay or arm of the Gulf of Mexico. For marine seawater, there are no permanent water rights, real property rights, that have been granted for use of the water in the Gulf of Mexico. For seawater in a bay or arm of the Gulf of Mexico, very few water rights have been granted for this water. Diversions of seawater in a bay or arm of the Gulf are also limited to industrial water. Water for municipal and domestic needs will not be taken from this part of the Gulf of Mexico.

Concerning the amended map and notice rules, these rules do not impact private real

property. The purpose of these procedural rules is to change requirements for maps in applications, and to add notice of an application for use of an alternate source of water. The intent is to bring mapping and platting requirements in TCEQ's rules up-to-date, and to provide notice to GCDs and other interested parties if an applicant is planning to use groundwater as an alternate source. These rules are procedural in nature and do not impact private real property.

Thus, Texas Government Code, Chapter 2007, does not apply to these proposed rules because these rules do not impact private real property. Furthermore, under the proposed rules, the commission may include special conditions in a permit issued under this rulemaking to mitigate adverse impacts on the availability of water for other water rights and water right applicants.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposed rules related to the amending of TWC, §11.122, may be subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

Although the proposed rules are procedural, the rules are related to prior rules that

expedite permitting for diverting desalinated seawater. CMP goals applicable to the proposed rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rules include those contained in 31 TAC §501.33(a). The proposed rules implement HB 3735 and SB 1430, which encourage diversions of desalinated seawater by allowing expedited processing for amendments to add diversion points to an existing water right when the applicant begins use of desalinated seawater. In 2015 in HB 2031, the Legislature found concerning the existing rules "...that it is necessary and appropriate to grant authority and provide for expedited and streamlined authorization for marine seawater desalination facilities, consistent with appropriate environmental and water right protections, ..." Since one of the purposes of the expedited amendment rules is to encourage applicants to begin using desalinated seawater in lieu of their existing surface water, the rules are consistent with the CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any CNRAs, and because one of the purposes of the proposed rules is to protect coastal and natural resources.

The commission reviewed the rules related to mapping and notice in the rulemaking for

consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rules are administrative in nature and will have no substantive effect on commission actions subject to the CMP and are, therefore, consistent with the CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 20, 2018, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

<http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2017-034-295-OW. The comment period closes on March 26, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at

http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Ross Henderson, Water Availability Division, at (512) 239-4735.

**SUBCHAPTER A: REQUIREMENTS OF WATER RIGHTS APPLICATIONS GENERAL
PROVISIONS**

**DIVISION 7: REQUIREMENTS FOR APPLICATIONS FOR AMENDMENTS TO WATER USE
PERMITS AND EXTENSIONS OF TIME**

§295.73

Statutory Authority

The new rule is proposed under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1), concerning the TCEQ's authority over water and water rights; TWC, Chapter 18, concerning Marine Seawater Desalination Projects; TWC, §11.1405, concerning Desalination of Seawater for the Use of Industrial Purposes; and TWC, §11.122, relating to water rights amendments.

The new rule implements House Bill 3735 and Senate Bill 1430 (85th Texas Legislature, 2017) and TWC, §11.122(b-1) and (b-2).

§295.73. Texas Water Code, §11.122(b-1) Amendment Applications.

(a) Prior to being declared administratively complete, applications submitted under this section must demonstrate the amount of desalinated seawater the water right holder has begun using.

(b) Technical review for applications under this section will be completed prior to all other administratively complete applications in the basin that do not meet the requirements of this section.

(c) The commission may include special conditions in the permit, including, but not limited to a re-opener provision, to mitigate adverse impacts on the availability of water for applications that were administratively complete prior to an application that triggered the expedited technical review under subsection (b) of this section.

**SUBCHAPTER A: REQUIREMENTS OF WATER RIGHTS APPLICATIONS GENERAL
PROVISIONS**

**DIVISION 12: MAPS PLATS, AND DRAWINGS ACCOMPANYING APPLICATION FOR
WATER USE PERMIT**

[§§295.121 - 295.126]

Statutory Authority

The repeal of the rules is proposed under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1), concerning the commission's authority over water and water rights; and TWC, §11.125, relating to maps and plats.

The repeal of the rules implements House Bill 3735 (85th Texas Legislature, 2017) and TWC, §11.125(a).

[§295.121. Requirements.]

[Except where written approval of the executive director has been obtained, an application for a water use permit must be accompanied by application plans conforming to the following minimum requirements.]

[(1) The plans shall be prepared by, or under the direction and supervision of, a registered professional engineer. If irrigation is proposed, the portion of the plans pertaining to irrigation may be prepared by, or under the direction and supervision of, a registered public surveyor.]

[(2) The plans shall be on tracing linen with waterproof ink. However, photographic reproductions are acceptable if on a stable mat film such as Chronar, Estar, Herculene, or approved equivalent. Aerial photographs or other forms of maps or plats may be considered acceptable for small projects, if appropriate.]

[(3) The scale shall be not less than one inch equals 2,000 feet.]

[(4) The dimensions of each sheet of plans on tracing linen or approved equivalent shall be 22-24 inches by 36 inches. There shall be a 2-inch binding margin at the left-hand edge, and the other 3 edges shall have margins of not less than 1/2 inch.]

[(5) There shall be a title block on the lower right-hand corner of all sheets of tracing linen or approved equivalent. A title block shall be on the reverse side of all aerial photographs or acceptable alternative plats or maps. The title block shall include the following information:]

[(A) name of project;]

[(B) name and address of the owner;]

[(C) the county in which the project is to be located; and]

[(D) the sheet or photograph number and the total number of sheets; for example: "Sheet 1 of 1," "Sheet 4 of 6."]

[(6) If applicable, match lines must be shown on appropriate sheets of plans.]

[\$295.122. Drawings Not To Be Folded.]

[Drawings, maps, and aerial photographs shall not be folded. If mailed, they must be protected by a tube or heavy envelope.]

[\$295.123. Content Requirements of Maps.]

[Maps or plats shall be drawn to a scale not less than one inch equals 2,000 feet, and shall show the following:]

[(1) the location and extent of the proposed works, accompanied by a vicinity map;]

[(2) the location of each point of diversion, by course and distance from a corner of an original land survey and/or other survey point of record;]

[(3) the location at which return water or surplus water will be discharged into a stream, by course and distance from a corner of an original land survey and/or other survey point of record;]

[(4) the name of the river, stream, or other source of supply, with the direction of flow indicated;]

[(5) the position and area of all lakes, reservoirs, or basins intended to be used, and the water line thereof; and]

[(6) the location and ownership of all existing canals, laterals, ditches, conduits, reservoirs, or other works of like character, indicated by appropriate symbols to differentiate these works from the proposed works.]

[§295.124. Additional Requirements for Dams and Reservoirs.]

[(a) In addition to the preceding requirements, maps or plats submitted with application plans for dam and reservoir projects shall include the following, if applicable:]

[(1) a plan of the dam, showing location of all pertinent features, including structures, spillway discharge channels, roads, and property lines;]

[(2) a topographic map covering damsite, reservoir area, spillways, streambed downstream from the dam, spillway and outlet works, discharge channels for maximum high-water level and normal maximum high-water level with waterline contours shown in heavy lines on reservoir area, and the source of the topographic and supplementary information for determination of contours;]

[(3) a survey tie of a station on the centerline of the dam to a corner of an original land survey and/or other survey point of record;]

[(4) a longitudinal profile along the axis of the dam and abutments showing elevations of the original groundline and locations of bottom of core trench or other cutoff facilities; the top of the impervious stratum, if any; soil boring logs; all outlet works, with inlet and outlet invert elevations; and top of dam;]

[(5) plans, profiles, and cross sections of spillways and discharge channels, in appropriate dimensions;]

[(6) a cross section of the dam at its maximum height, showing all pertinent dimensions and details;]

[(7) the drainage area, in square miles;]

[(8) preliminary plans of service and emergency spillways, showing adequacy of these spillways to pass anticipated floods. The following information shall be provided: elevation-area-capacity curves and tables for the proposed reservoir to maximum high-water elevation; spillway discharge-rating curves and water surface profiles for spillway discharge channels, including tailwater elevation; and survey of receiving channel for determination of downstream discharge conveyance capacity. Derivation of the spillway design storm, flood routing through reservoir, and calculated surcharge and freeboard shall be shown in report form. Spillway adequacy of proposed and existing dams will be evaluated utilizing standard engineering procedures and techniques including, but not limited to, those employed and recommended by the U.S. Army Corps of Engineers, U.S. Soil Conservation Service, U.S. Bureau of Reclamation, and the American Society of Civil Engineers.]

[(b) All elevations shall be referred to mean sea level datum.]

[(c) Plans of a proposed enlargement of a dam shall be drawn to clearly distinguish between the limits of the new and old work.]

[(d) The executive director may require the filing of additional information which, in his opinion, may be necessary to determine the feasibility of the project.]

[\$295.125. Requirements for Temporary Permits.]

[An application for a temporary permit shall be accompanied by a vicinity map at least 8-1/2 by 11 inches with sufficient information to enable the executive director to locate on the ground the diversion site and return water discharge points.]

[\$295.126. Requirements for Texas Water Code, §11.143, Permits.]

[An applicant for a Texas Water Code, §11.143, permit shall furnish an aerial photograph of the site. If no aerial photograph is available, the applicant shall submit a map upon which are outlined any areas to be irrigated and upon which the dam and reservoir are located by distance and direction from a corner of an original survey and/or other survey point of record.]

**SUBCHAPTER A: REQUIREMENTS OF WATER RIGHTS APPLICATIONS GENERAL
PROVISIONS**

**DIVISION 12: MAPS PLATS, AND DRAWINGS ACCOMPANYING APPLICATION FOR
WATER USE PERMIT**

§295.121, §295.122

Statutory Authority

The new rules are proposed under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1), concerning the commission's authority over water and water rights; and TWC, §11.125, relating to maps and plats.

The new rules implement House Bill 3735 (85th Texas Legislature, 2017) and TWC, §11.125(a).

§295.121. Content Requirements of Maps.

Applications must include maps or plats in the form and containing the information specified in the relevant water right form and instructions for the particular authorization sought.

§295.122. Requirements for Dams and Reservoirs.

Maps, plats, or drawings submitted with application plans for dam and reservoir projects must include the information described in §299.3 of this title (relating to General).

SUBCHAPTER C: NOTICE REQUIREMENTS FOR WATER RIGHT APPLICATIONS

§§295.151 - 295.153

Statutory Authority

The amendments to the rules are proposed under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and §5.105 concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1), concerning the commission's authority over water and water rights; TWC, §11.132, relating to notice; and TWC, §11.143, relating to use of water from an exempt reservoir for nonexempt purposes.

The amendments to the rules implement House Bill 864 (85th Texas Legislature, 2017); TWC, §11.132(c) and (d); and TWC, §11.143(e) and (f).

§295.151. Notice of Application and Commission Action.

(a) At the time that the technical review of an application for a permit to use state water has been completed and the technical memoranda have been filed by the executive director with the chief clerk of the commission, the commission shall give notice by mail to those persons specified in §295.153 of this title (relating to Notice By Mail). At such time, the chief clerk shall furnish a copy of the notice to the applicant, and the applicant shall cause such notice to be published, pursuant to §295.152 of this title (relating to Notice By [by] Publication).

(b) The notice must:

(1) state the name and address of the applicant;

(2) state the date on which the application was received by the commission;

(3) state the date the application was filed by the executive director with the chief clerk as required by §281.17(a) or (b) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness);

(4) state that the executive director has determined that the technical review of the application is complete;

(5) state the application number;

(6) state the type of permit the applicant is seeking;

(7) state the purpose and extent of the proposed appropriation of water;

(8) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;

(9) identify any proposed alternative source of water, other than state water, identified by the application;

(10) [(9)] state the executive director's recommendation regarding the application;

(11) [(10)] state that an affected person may request a hearing as set out in Chapter 55, Subchapter G of this title (relating to Requests for Contested Case Hearing and Public Comment on Certain Applications);

(12) [(11)] give a general description of the location and area of any land to be irrigated;

(13) [(12)] include the name and address of the agency, and the telephone number of an agency contact from whom interested persons may obtain future information; and

(14) [(13)] give any additional information the commission considers necessary.

§295.152. Notice By Publication.

(a) For an application for a permit pursuant to Texas Water Code (TWC), §11.121, or for an amendment to a TWC, §11.121, permit, a certified filing, or a certificate of

adjudication pursuant to TWC, §11.122, and §295.158(b) of this title (relating to Notice of Amendments to Water Rights) [If notice by publication is required], the applicant shall cause the notice issued by the chief clerk to be published in a newspaper of general circulation within the section of the state where the source of water is located.

(b) For an application for a permit pursuant to TWC, §11.143, or for an amendment pursuant to TWC, §11.122, to a TWC, §11.143, permit, or a certificate of adjudication which authorizes diversions from a reservoir which is exempted under TWC, §11.142, in which the applicant proposes to use groundwater from a well located within a groundwater conservation district as an alternative source of water, the applicant shall cause the notice issued by the chief clerk to be published in a newspaper of general circulation within each county in which the groundwater conservation district is located.

(c) [(b)] The date of publication shall be on or before the date of publication directed by the chief clerk of the commission. In any event, the date of publication shall be not less than 30 days before the date set for commission consideration of the application.

§295.153. Notice By Mail.

(a) If notice by mail is required, the commission shall mail the notice by first-class mail, postage prepaid, to persons listed in this section for each type of application. The commission shall mail required notice not less than 30 days before the date set for commission consideration of the application.

(b) For an application for a permit pursuant to [the] Texas Water Code (TWC), §11.121, or for an amendment to a TWC [Texas Water Code], §11.121, permit, a certified filing, or a certificate of adjudication pursuant to TWC [the Texas Water Code], §11.122, and §295.158(b) of this title (relating to Notice of Amendments to Water Rights), notice shall be mailed to the following:

(1) each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed with the commission or its predecessor agencies;

(2) all navigation districts within the river basin concerned; [and]

(3) each groundwater conservation district with jurisdiction over the proposed groundwater production, if the applicant proposes to use groundwater from a well located within a groundwater conservation district as an alternatives source of water; and

(4) [(3)] other persons who, in the judgment of the commission, might be affected.

(c) For an application for a permit pursuant to TWC [the Texas Water Code], §11.143, or for an amendment pursuant to TWC [the Texas Water Code], §11.122, to a TWC [Texas Water Code], §11.143, permit, or a certificate of adjudication which authorizes diversions

from a reservoir which is exempted under TWC [the Texas Water Code], §11.142, and pursuant to §295.158(b) of this title [(relating to Notice of Amendments to Water Rights)], notice shall be mailed to the following:

(1) each person whose claim or appropriation has been filed with the commission or its predecessor agencies and whose diversion point is downstream from the location of the dam or reservoir as described in the application; [and]

(2) each groundwater conservation district with jurisdiction over the proposed groundwater production, if the applicant proposes to use groundwater from a well located within a groundwater conservation district as an alternative source of water; and

(3) [(2)] other persons who, in the judgment of the commission, might be affected.

(d) For an application to amend a certified filing authorizing diversions from a reservoir which is exempted under TWC [the Texas Water Code], §11.142, which, if granted, will cause a change in the reservoir so that it would no longer be exempt under TWC [the Texas Water Code], §11.142, notice shall be mailed to the persons listed in subsection (b) of this section.

(e) For an application to authorize the use of state water for domestic and livestock use from a reservoir constructed by the federal government for which no local sponsor has

been designated nor permit issued, the commission shall issue such notice as it deems appropriate.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §297.46.

Background and Summary of the Factual Basis for the Proposed Rule

In 2017, the 85th Texas Legislature passed House Bill (HB) 3735, which became effective on September 1, 2017. Existing Texas Water Code (TWC), §11.134(b)(3)(C), states that the commission may only grant a water right application if it is not detrimental to the public welfare. HB 3735 amended TWC, §11.134, by adding TWC, §11.134(b-1) which states that the commission may consider only the factors that are within the jurisdiction and expertise of the commission as established by TWC, Chapter 11, in determining whether an appropriation is detrimental to the public welfare. The change the commission proposes to Chapter 297 implements the further defining of the TCEQ's consideration of public welfare required by HB 3735. Specifically, the commission proposes to amend §297.46 to implement the changes required by HB 3735.

In September 2017, the commission held an informal stakeholder meeting to solicit comments regarding the implementation of HB 3735. The executive director based this proposed rule on consideration of the legislation and consideration of comments received from the stakeholders.

In corresponding rulemakings published in this issue of the *Texas Register*, the commission also proposes new and amended sections to implement HB 3537 and SB 1430 in 30 TAC Chapter 80, Contested Case Hearings; HB 1648 in 30 TAC Chapter 288, Water Conservation

Plans, Drought Contingency Plans, Guidelines and Requirements; and HB 3735 and SB 1430 in 30 TAC Chapter 295, Water Rights, Procedural.

Section by Section Discussion

§297.46, Consideration of Public Welfare

Section 297.46 provides that the commission may grant an application for a new or amended water right only if it finds that it would not be detrimental to the public welfare. The commission proposes to amend §297.46 to add a sentence which states "For purposes of public welfare findings made under this section, the commission may consider only factors that are within the commission's jurisdiction and expertise as established in Texas Water Code, Chapter 11." The commission proposes this amendment to implement TWC, §11.134(b-1), as amended by HB 3735.

Fiscal Note: Costs to State and Local Government

Maribel Montalvo, analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are expected for units of local government as a result of the administration or enforcement of the proposed rule.

The proposed rulemaking implements HB 3735 by adopting rules to clarify that the commission will only consider factors that are within its jurisdiction and expertise as established in TWC, Chapter 11, for purposes of public welfare findings made for water rights applications. This rulemaking also codifies the commission's existing practices.

Public Benefits and Costs

Ms. Montalvo also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be clearer agency rules and the potential for more efficient contested case hearings.

No fiscal implications are anticipated for businesses or individuals as a result of the implementation or administration of the proposed rule as the rulemaking merely codifies the commission's existing practices. The codification of the commission's practices with respect to public welfare determinations in water rights applications may reduce time spent during contested case hearings discussing public welfare arguments that are outside the commission's jurisdiction and expertise.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect a rural community in a material way for the first five years that

the proposed rule is in effect. The proposed rule would apply statewide and affect rural communities and urban communities equally.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect small or micro-businesses for the first five-year period the proposed rule is in effect and is intended to implement HB 3735.

Government Growth Impact Statement

The commission reviewed this proposed rulemaking and determined that a Government Growth Impact Statement assessment is not required because the proposed rule does not create or eliminate a government program; does not require the creation of new employee positions or the elimination of existing employee positions; does not require an increase or decrease in future legislative appropriations to the agency; does not require an increase or decrease in fees paid to the agency; does not require the creation of a new regulation; does not expand, limit or repeal an existing regulation; and does not change the number of individuals subject to the rule's applicability.

During the first five years that the proposed rule would be in effect it is not anticipated that there will be an adverse impact on the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking under Texas Government Code, §2001.0225, "Regulatory Analysis of Major Environmental Rules," and has determined that this rulemaking is not a "major environmental rule." HB 3735 amended TWC, §11.134, to add that the TCEQ may consider only the factors that are within the jurisdiction and expertise of the TCEQ as established by TWC, Chapter 11, in determining whether an appropriation is detrimental to the public welfare. This rulemaking implements that statute.

The purpose of the rulemaking is not "to protect the environment or reduce risks to human health from environmental exposure," in a way that may "adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." The specific intent of this rule is not to protect the environment or reduce risks to human health from environmental exposures (*see* Texas Government Code, §2001.0225(g)(3)). The specific intent of the rule is to enumerate what the TCEQ may consider when it is determining whether an application for a water right is detrimental to the public welfare under TWC, §11.134(b)(3)(C). This rule is consistent with existing case law and the TCEQ's current interpretation of TWC, §11.134.

Even if this rulemaking was a "major environmental rule," this rulemaking meets none of the

criteria in Texas Government Code, §2001.0225, for the requirement to prepare a full Regulatory Impact Analysis. This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being proposed solely under the TCEQ's general rulemaking authority. This rulemaking is being proposed under a specific state statute enacted in HB 3735.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rule and performed analysis of whether this proposed rule constitutes a takings under Texas Government Code, Chapter 2007 (*see* Texas Government Code, §2001.0225(g)(3)). The specific purpose of the proposed rule is to incorporate the requirements of HB 3735 into the TCEQ's rules by stating that for the purpose of determining whether an application for a water right is detrimental to the public welfare under TWC, §11.134(b)(3)(C), the TCEQ may only consider factors that are within the commission's jurisdiction and expertise as established by TWC, Chapter 11. The proposed rule advances this stated purpose by incorporating this statutory directive into the rule requiring the public welfare determination. The rule does not burden private real property in any way.

Consistency with the Coastal Management Program

The commission reviewed this proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 20, 2018, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

<http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2017-034-295-OW. The comment period closes on March 26, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at

http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Ross Henderson, Water Availability Division, at (512) 239-4735.

SUBCHAPTER E: ISSUANCE AND CONDITIONS OF WATER RIGHTS

§297.46

Statutory Authority

The amendment to the rule is proposed under the authority of Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105 concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC; TWC, §5.013(a)(1) concerning the TCEQ's authority over water and water rights; and TWC, §11.134(b-1), which relates to the factors that the commission may consider when determining whether a water right application is detrimental to public welfare.

The amendment to the rule implements House Bill 3735, Section 5 (85th Texas Legislature, 2017) and TWC, §11.134(b-1), which relate to the factors that the commission may consider when determining whether a water right application is detrimental to the public welfare.

§297.46. Consideration of Public Welfare.

The commission may grant an application for a new or amended water right only if it finds that it would not be detrimental to the public welfare. For purposes of public welfare findings made under this section, the commission may consider only factors that are within the commission's jurisdiction and expertise as established in Texas Water Code, Chapter 11.